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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA
WEDNESDAY, JUNE 18, 2008
1:35 P.M.

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15 WEDNESDAY, JUNE 18, 2008

16 1:35 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

SANDRA L. BRYSON, Member
Board of Parole Hearings

DONALD MILLER, Paralegal
Southern California Defense Lawyers

DIANE GOODWIN-THOMAS
Retired, Department of Corrections Staff

LINDA BUCHALTER
Lifer Attorney

ROBERT G. DOYLE, Ph.D., Member
Board of Parole Hearings

JANICE K. ENG, Member
Board of Parole Hearings

JUNE PING

Sister of Appointee

CHRIS WARD, Director

Crime Victims Action Alliance

ALEXIS DE LA GARZA, Deputy District Attorney
County of Los Angeles

KEITH CHANDLER

Lifer Attorney

JOHANNA O. HOFFMANN

Lifer Attorney

SCOTT HANDLEMAN

Lifer Attorney

EDWARD MARTINEZ, Member,
Board of Parole Hearings

DOUG MANER, Deputy District Attorney
County of Stanislaus
Member, CDAA Lifer Committee

DAVID WARREN

Taxpayers for Improving Public Safety

HEIDI STRUPP

Legal Services for Prisoners with Children

ANDREA BIBLE

Legal Services for Prisoners with Children

TODD D. RIEBE, District Attorney

County of Amador

Co-chair, CDAA Lifer Committee

CHUCK HUGHES, Assistant District Attorney
County of Riverside

DAVID DAHLE, Head Deputy District Attorney
Division of Lifer Hearings
Los Angeles County District Attorney's Office

JILL KLINGE, Deputy District Attorney
County of Alameda

1 RONALD RICO, Deputy District Attorney
County of Santa Clara

2 MARK NORTON
3 Lifer Attorney

4 KEITH A. WATTLEY, Defense Attorney
5 unCommon Law

6 DONALD MILLER, Paralegal
Southern California Defense Lawyers

7 MATT GRAY
8 Victims Foundation

9 SCOTT HANDLEMAN
10 Lifer Attorney

11 DOUGLAS TREESMAN, Deputy District Attorney
County of Fresno

12 DIANE LETARTE
13 State Appointed Defense Attorney

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--ooOoo--

CHAIRMAN PERATA: Rules Committee will meet as a subcommittee. Senator Dutton is in the Budget Conference Committee. He will be here shortly.

We have today four appointees, all of whom are Board of Parole Hearing officers. This is the eighth confirmation hearing that we have conducted on the Board of Parole. There is one new appointee today and three reappointments before us.

I'm going to propose the following. We want to hear each appointee individually, then afterwards, if people who have comments to make specific to individuals or generally to the whole process -- I know a number of people have talked to us about that -- you may feel free to come in and do that. Then we will move to a Committee discussion and then disposition of the vote. So, if you have things that are more broadly aimed, other than specific individuals, you can do that at that time as well.

With that, Sandra Bryson, come forward. You may begin.

MS. BRYSON: Chairman Perata, Members of the Senate Rules Committee, I am Sandy Bryson.

I appreciate the opportunity to appear before you today after two years of sitting across the table from prisoners, some who are suitable for reentering society, some who are not. I have read and heard profound testimony from those who have been positively and negatively impacted.

I ask to continue this important work and to

1 develop this work as a commissioner. And I will be happy to
2 answer any questions you have today.

3 Thank you.

4 CHAIRMAN PERATA: Senator Battin?

5 SENATOR BATTIN: I don't have any questions.

6 CHAIRMAN PERATA: You've been there now since
7 2005, which makes you the longest serving member of the four
8 here today.

9 How would you characterize your experiences, and
10 what should we be doing differently?

11 MS. BRYSON: When I came on the Board, I was
12 asked why I did this. And for about a year --

13 CHAIRMAN PERATA: We gave you a drug test, as I
14 recall.

15 MS. BRYSON: Yes, they did.

16 I told people it was intensely interesting.

17 I find it more and more interesting as I go
18 along, and I learn more about the process and become, I think,
19 better at what I'm doing.

20 I'm seeing especially recently an opening up of
21 the board and progress across the board in terms of the way we
22 are structured and the way we do business. That's encouraging
23 to me, and it's professionally encouraging as well as personally
24 encouraging.

25 I think we have a long way to go. The CDCR has
26 many challenges. We as a board have many challenges, but I
27 believe that if we keep focused on what we're doing, which is
28 we're individually focusing on inmates, we are considering not

1 only their due process but also public safety, and if we
2 consider that they are the center of our focus, then I think
3 we'll get where we want to go with the leadership we now
4 have.

5 CHAIRMAN PERATA: We talked before about
6 postponements, and lack of files, and old psych evaluations.
7 How is all that going?

8 MS. BRYSON: That's improving, particularly
9 recently in the last few months. We've seen various
10 statistics, and they show that in fact the rate of postponements
11 is going down markedly. And I'm engaged, because when I prepare
12 cases, there's nothing I want to do less than to have to
13 postpone a case, and I'm not having to do that. I've had
14 several weeks now where I have actually had every case occur.
15 That's very encouraging.

16 CHAIRMAN PERATA: Okay.

17 Now, if anybody would like to come up in support
18 of the nominee, again, the general comments will be at the end
19 of the program.

20 Anybody in opposition? Mr. Miller, opposition?

21 MR. MILLER: Good afternoon, Senators.

22 Very briefly, my name is Donald Miller. I'm a
23 paralegal. I'm not an attorney. I was a practicing physician
24 and then served a life sentence, during which time I obtained my
25 law degree, and I work for and represent two law firms from
26 Southern California. And I work for about six attorneys who do
27 the parole hearings, and I help with the litigation and
28 research. So, over the past 20 years, I've reviewed several

1 thousand hearing transcripts.

2 I am -- myself and the people for whom I work
3 strongly oppose the confirmation of Commissioner Bryson for a
4 couple of reasons. We have submitted a couple of letters with,
5 I believe, a copy of a transcript. I don't won't go into that
6 because the Committee has that to review.

7 Mainly in the past, and I've been to, I think,
8 eight of the last nine hearings on BPH Commissioners, the
9 question is whether the individual is qualified and the type of
10 work they've done as a Commissioner over the past several
11 years.

12 I don't believe that Commissioner Bryson has any
13 particular qualification by education or training, and it's
14 reflected in the hearings, at which there's very little respect
15 for the regulations that govern these hearings and for the due
16 process rights in the manner in which and the amount of respect
17 that's shown for the inmate and the attorney during these
18 hearings.

19 But mainly, Penal Code Section 5075 clearly
20 states that the governor shall appoint, and the committee shall
21 affirm commissioners who represent a cross section of the
22 state's economic, geographic, gender, racial, et cetera,
23 community. And all but one of the Board's Commissioners are
24 from law enforcement, and that's not the cross section. And if
25 the Committee approves these -- all of these nominations, and
26 the Governor's appointed still more former law enforcement, then
27 I don't believe the law's being followed.

28 So, I don't think it's a difficult decision. If

1 -- if the Commissioners continue to represent law enforcement,
2 and I'm not saying there shouldn't be maybe one or two
3 Commissioners as part of that cross section that should be on
4 the panel, but these are the same people that arrested these
5 inmates, put them in prison, testified against them. And
6 they're put on there for the obvious political purpose of
7 denying parole. And it not only defeats due process, but it is
8 completely prohibited by the statute.

9 So, I'm merely asking the Committee to on behalf
10 of the attorneys I work for, and of all the work that I've done,
11 and the material I've reviewed, to -- not to confirm this
12 candidate. I believe she, from what I've heard, is a very
13 outstanding person in the community, and from the work she's
14 done in the past.

15 But that's not what's at issue here. What's at
16 issue is the qualifications and performance. And I don't
17 believe they meet even the minimal standard to be a
18 commissioner.

19 With that, respectfully ask the Committee not to
20 confirm this candidate. Thank you.

21 CHAIRMAN PERATA: Thank you, sir.

22 Anything further;

23 MS. GOODWIN-THOMAS: Hello, my name Diane
24 Goodwin-Thomas. I worked for the Department of Corrections for
25 17 years. I'm retired from the Department of Corrections.

26 And I am a friend of Russell Weiss, an inmate
27 who's incarcerated at CMC East, and was on a Parole Board where
28 Commissioner Bryson was a part of the panel.

1 And I just wanted to oppose -- oppose that she be
2 a part of the panel because of -- I understand that during his
3 Parole Board hearing, that she said that he was a disgrace to
4 our country.

5 Russell Weiss was a distinguished member of the
6 military. He was put into the Marines at 17 years old as a
7 kid. He was taught to be a sniper. He served in Vietnam,
8 where he won a Silver Star, a Bronze Star, the Presidential Unit
9 Citation, two Purple Hearts; he was wounded more than once. He
10 was two years in the military hospitals. He -- his weapon was
11 retired from service. He was known as Bad News One. He risked
12 his life and limb for our country.

13 And for her to say that he was a disgrace to our
14 country, frankly, is an embarrassment to me as a United States
15 citizen.

16 I think it's a disgrace that we have so many U.S.
17 vets in our prisons. And this man has been incarcerated for 30
18 years. You know, he was plunked back down in the United States
19 after serving in our -- serving our country, and without the
20 benefit, I don't believe, of being deprogrammed from being over
21 in Vietnam. So therefore, I just feel that was a very
22 thoughtless thing to say.

23 And he has come a long way since he's been
24 incarcerated. He's a gentle person. He's programmed well.
25 He's got lasting disabilities from his service time. He's --
26 he's almost deaf. He's blind in his right eye. He has PTSD,
27 but he has several distinguished medals of honor, and he's still
28 a member of our armed forces.

1 Thank you.

2 CHAIRMAN PERATA: Thank you.

3 MS. BUCHALTER: Good afternoon. My name is
4 Linda Buchalter. I'm an attorney practicing law in the forum of
5 life suitability for parole hearings. I've represented over
6 2,000 clients probably in my career.

7 I'm here to oppose the confirmation of
8 Commissioner Bryson. I've appeared before her several times.
9 My clients do not get grants of parole, even when they are
10 highly suitable and by any objective measure would be found
11 suitable.

12 I believe that she brings to the hearings her law
13 enforcement background. And I believe Mr. Miller and Ms. Thomas
14 have both stated things that I wanted to state, but I won't.
15 For economy of time, I won't repeat everything.

16 However, I was the attorney for Mr. Weiss that
17 was just brought up recently. And Commissioner Bryson was
18 Presiding Commissioner, and she denied him. He's been down
19 about 30-odd years now.

20 When he came out of the military that was
21 described earlier, he certainly had serious Post Traumatic
22 Stress Syndrome, and there was no help for him. There was no
23 one to help him, and he committed a life offense that landed him
24 in prison, with the expectation of release, of course, after he
25 served his minimum eligible time -- he had to serve a certain
26 amount of time; he's way past that time now -- and after he
27 shows he's rehabilitated.

28 He's been showing he's been rehabilitated for a

1 very long time.

2 But what really appalled me most of all was the
3 law enforcement language that I heard coming out. I will have
4 to just repeat this, because when she denied -- when
5 Commissioner Bryson denied Mr. Weiss a grant of parole, she
6 brought up his military. He was an elite sniper. He was very
7 seriously wounded, and it's been pointed out, he spent many,
8 many -- a year or two in the hospital, trying to recover from
9 his wounds. He still suffers a great deal from those wounds
10 that he suffered in the military when he was a sniper and -- and
11 trying to help our country.

12 He didn't come back a hero in Vietnam. He was
13 vilified, and that again exacerbated all of the traumatic stress
14 that he's suffered that led him into a life offense.

15 But when Commissioner Bryson said that by denying
16 him parole, she stated that he shamed the military by committing
17 this crime. "The military taught you to kill," she stated, "and
18 you abrogated a contract of great trust."

19 She gave a scathing, personalized lecture to him,
20 castigating my client, Mr. Weiss, who did not deserve that in my
21 opinion, and she effectively increased his punishment because of
22 his distinguished military service. He did get two Purple
23 Hearts, a Silver Cross, and many other commendations that were
24 awarded to him for his excellent service to our country at a
25 time when it was not popular to do that.

26 So, I do believe that because of her law
27 enforcement background, her feeling that somehow if you are a
28 military person, you have a higher trust -- I don't know where

1 there's anywhere anything like that in the law that I read or
2 that I deal with -- and I would ask you to oppose Commissioner
3 Bryson, as we need people who do not speak like that to my
4 clients.

5 I felt he was highly humiliated. He was shamed.
6 He was -- he was -- he went out very, very sad and very, very
7 depressed. And I don't know how he's ever going to have a hope
8 of going home with commissioners such at this law enforcement --
9 former law enforcement officer, Commissioner Bryson. I think
10 it's too heavy-handed in -- in our system to have so many law
11 enforcement officers. I almost feel like it's the wolf guarding
12 the hen house.

13 And I would oppose her -- her confirmation.

14 CHAIRMAN PERATA: Thank you.

15 Anyone further?

16 Would you like to respond to that?

17 MS. BRYSON: I stand by the decisions I made in
18 all of these cases.

19 I have had not had the benefit of reviewing these
20 cases recently, so it's impossible for me to put into context
21 what has been stated.

22 I do make a policy of showing the greatest
23 respect for each and every inmate who comes before me.

24 I feel that my law enforcement background gives
25 me a benefit, as it does, I believe, for all law enforcement --
26 previous law enforcement officers. And that is that we have
27 seen both sides. On the street, we make it our mission to look
28 behind what has happened and to respect everyone involved in a

1 crime, and that includes the offender.

2 It's our job as Commissioners to focus on the
3 inmate and find out what his mental attitude was, as he
4 understands it, and what his mental attitude is today. That is
5 part of the conversation we have with inmates.

6 We also, of course, have their entire record to
7 consider. We consider their previous criminal history. We
8 consider their performance in prison. Acts speak louder than
9 words.

10 We also consider their mental status as evaluated
11 by professionals. We consider if they're ready for parole in
12 terms of employment, in terms of their sociability, and the
13 self-help that they've done.

14 We consider their plans to go out.

15 All of these elements are considered, as well as
16 the testimony from both -- not only the prisoner himself, but
17 his attorney and the district attorney.

18 I believe that what we have done as law
19 enforcement officers gives us a more balanced view of each
20 inmate. And we're willing to look at both sides. And we're not
21 shocked by what we see.

22 And we're very sympathetic, because we want to
23 see these individuals go out into society. We want to see them
24 restored to society. We have absolutely no interest in keeping
25 them behind bars. And every time I go into a hearing, it is
26 with the expectation that I'll be able to give a grant.

27 CHAIRMAN PERATA: Thank you. You may retire.

28 Our next is Robert Doyle.

1 MR. DOYLE: Good afternoon.

2 CHAIRMAN PERATA: He wants to say something.

3 SENATOR BATTIN: Thank you, Mr. Chairman.

4 I'm very happy to see Bob Doyle up here in front
5 of us today. I count my former Sheriff as a personal friend of
6 mine.

7 I've known him for many, many, many years. And I
8 will tell you, he's just a good man with a lot of integrity. I
9 think he has taken that to the Parole Board and is looking to do
10 what he thinks is the right thing to do.

11 I'm happy to be here supporting him today.

12 MR. DOYLE: Thank you, Senator.

13 CHAIRMAN PERATA: Would you like to try to
14 overcome that now?

15 [Laughter.]

16 MR. DOYLE: Good afternoon, Mr. Chairman and
17 Members of the Committee.

18 As the Senator said, I'm Robert Doyle. Just a
19 little bit about me. I grew up in the Coachilla Valley on the
20 poor side of the tracks in north Indio. And my father worked as
21 a diesel mechanic in the agricultural areas of the lower
22 Coachilla Valley, and my mom was a maid at Thunderbird Country
23 Club. They worked hard, and they were loving parents.

24 I loved sports, and I started out as a physical
25 education major in college. But with a wife and a child on the
26 way, I needed a job. And a rival -- actually a rival football
27 coach from across town got me interested in law enforcement.

28 During my 32-year career in law enforcement, I

1 spent 26 years in management, and administration, and in
2 executive positions. My initial interest in management came
3 when I worked in management for Sears and Roebuck there in Indio
4 before becoming a cop.

5 I served on two commissions in the past: the
6 Peace Officers Standards and Training Commission, and the
7 Advisory Gaming Commission. And I was also the Tribal Issues
8 Committee Chairman for the California State Sheriffs'
9 Association for three years.

10 And I've got a loving wife, three good boys, and
11 a great dog. I'm excited to be here today in front of you.

12 I'm here to answer any questions that you might
13 have, sir.

14 CHAIRMAN PERATA: Only somebody from Indio could
15 make that statement, how excited they are to be in Sacramento.

16 [Laughter.]

17 MR. DOYLE: There's some merit to that, sir.

18 CHAIRMAN PERATA: You're the newbie. You've been
19 here since last September.

20 Did you give up the job of Sheriff to do this, or
21 is it that you were just retiring and you needed something else?

22 MR. DOYLE: I was a sitting sheriff at the time
23 that the opportunity came up. I had 32 years on. And as you
24 know, we're in a 3 percent at 50 retirement, so those last two
25 years were pretty much, I'll be blunt, I was donating my time.

26 But our son, our youngest son who went off to
27 college in September got accepted to a private institution in
28 California.

1 CHAIRMAN PERATA: Say no more.

2 MR. DOYLE: So, there was a lot of variables that
3 went into my decision to take this opportunity.

4 CHAIRMAN PERATA: How do you like being on the
5 road?

6 MR. DOYLE: You know, probably as the job goes,
7 being on -- on the road is the toughest, you know, part in terms
8 of your family. But my wife and I've been married for 26 years.
9 I think she's kind of liking having that time during the week,
10 you know.

11 But it's -- you know, you definitely have to have
12 a supportive family to do this job. And I'm -- I'm blessed to
13 have that. So, it hasn't been a problem for me.

14 CHAIRMAN PERATA: I'm sure you stay in really
15 nice places?

16 [Laughter.]

17 MR. DOYLE: I've got a lot of Marriott points.

18 CHAIRMAN PERATA: It's a lot better than I
19 thought.

20 MR. DOYLE: Courtyard, Marriott.

21 CHAIRMAN PERATA: Is your wife here?

22 MR. DOYLE: No.

23 CHAIRMAN PERATA: I'm sure she would have
24 seconded that. She'd probably wonder why she didn't figure this
25 out earlier in your marriage.

26 [Laughter.]

27 CHAIRMAN PERATA: Any questions from the Members?
28 Anybody here in support? Opposition?

1 Congratulations, sit down. Don't go far.

2 MR. DOYLE: Thank you, sir.

3 CHAIRMAN PERATA: Thank you. It's good to see
4 you here.

5 That may be the first time that's ever happened.

6 Okay, number three is Janice Eng. Janice has
7 been here before. Welcome.

8 MS. ENG: Good afternoon, Chairman and other
9 Members of the Senate. Most of you I've met before except for
10 Senator Battin.

11 Seems like just yesterday I was here. Again, my
12 name's Janice Eng, for those of you who missed it. But it was,
13 just yesterday it was a year ago.

14 And I must say that the time has flown by since I
15 first joined on to the board. I've been active about --
16 probably about a year-and-a-half now. And before I knew it, we
17 were scheduled to come before the Senate Rules again.

18 So, I must say it's been an interesting, very
19 busy year-and-a-half. And that I, believe it or not, enjoyed
20 the public service that I've been doing, even though it's --
21 I've had to give up my life, basically, for all this time.

22 But one of the things I did want to say, last
23 year when Commissioner Martinez and I were before you, and you
24 had mentioned that if anybody represents the face of California,
25 it's these two Commissioners that are sitting before you.

26 And I took that to heart. I took that very, very
27 seriously. And it hit home. And the way I conduct myself as a
28 Commissioner, I've always had that in the back of my mind, that

1 I'm there, representing really the people of California.

2 And again, it's been a terrific time. I've
3 learned so much, and I've had unbelievable experiences. And I'm
4 happy, believe it or not, to be here again.

5 CHAIRMAN PERATA: It is hard to believe.

6 MS. ENG: I know.

7 CHAIRMAN PERATA: You must have had some pathetic
8 life before this; right? I'm just kidding.

9 MS. ENG: No, no.

10 CHAIRMAN PERATA: Let me ask you, in your written
11 responses, you said that you hadn't had any time to visit any of
12 the prisons. Is that because of workload?

13 MS. ENG: Yes. The only one that I was able to
14 get a full tour of was San Quentin, which really is an
15 experience in itself. Of all the prisons, I'm glad I was able
16 to go through that one.

17 The last time I was at another institution, I had
18 run into someone who headed up the Prison Industry Authority.
19 As I was walking out of the hearing room, he introduced himself.
20 And I said, oh, the next time I come here, you know, is it
21 possible for me to get a tour.

22 So, the next time I went -- and he said,
23 absolutely. So, the next time I was there, unfortunately my
24 hearings went longer, and I wasn't able to do it. Nobody could
25 get me the tour.

26 So, it is the timing. And it took me quite a
27 while before I was finally able to do the tour of San Quentin,
28 because you don't ever know.

1 CHAIRMAN PERATA: What did you find enlightening
2 about San Quentin?

3 MS. ENG: Because it's one thing to sit across
4 from the inmates and hear them describe to you how they're
5 living and what they face everyday. And then, all of a sudden,
6 it's not the same as seeing it on television, or what you can
7 imagine.

8 And then you're walking through there, and I did
9 run into one of the inmates that I had during that week. And at
10 first, I was a little apprehensive. But then, he came right up
11 to me. He said, "Oh, Commissioner, I'm so glad to see you
12 walking through here. Now you can see, you know, how we live."
13 And he said, "Is there anything that I can show you?"

14 They were very, very open. Another prisoner was
15 so open, he wanted me to come in and see what he'd done with his
16 cell.

17 And to walk around and see what they're doing in
18 the yard, because I've never really been exposed to that before.
19 So, it just adds more of a human element to it, and it brings
20 everything home.

21 But I did want to see their -- their mill and
22 cabinet area, because they produce unbelievable pieces of
23 woodwork in mill and cabinet. And in the print shop, there's a
24 lot of areas that I would have liked to have seen, but I just --
25 because of the logistics, I guess, and the timing, I didn't
26 really have a chance to.

27 CHAIRMAN PERATA: So, if I might be presumptuous,
28 when you see something like that, how do you -- I guess if I

1 talked this way I'd say "process it," but since I don't talk
2 that way -- when you see something like that, what difference
3 does it make in your dealings with a lifer coming before you?

4 MS. ENG: I don't know if it makes that much of a
5 difference. It's just a better understanding of what they're
6 faced with, I think, if anything.

7 And when they come in and they say, well, you
8 know, it's difficult because I've been in lockdown for so long,
9 and it just -- it's something that you can understand when
10 they're cooped up in a little, tiny cell, and they can't get
11 out. And yet, they're still able to overcome those elements and
12 still do things to improve themselves.

13 It just brings it more real. I don't know how
14 else to respond to that. Does that make sense to you?

15 CHAIRMAN PERATA: That's fine. Thank you.

16 Alex.

17 SENATOR PADILLA: Thank you.

18 I apologize for being a couple of minutes late.

19 I do have some questions for Ms. Eng, as I will
20 for Mr. Martinez as well.

21 But let me start my comments and questioning with
22 just reading from the California Code of Regulations, and this
23 is applicable to all the Commissioners to parole hearings that
24 are before us today. But just so that it's clear in my mind and
25 for this hearing,

26 "The role of the prosecutor is to
27 comment on the facts of the case
28 and present an opinion about the

1 appropriate disposition. In
2 making comments, supporting
3 documentation in the file should
4 be cited. The prosecutor may be
5 permitted to ask clarifying
6 questions of the ... panel, but
7 may not render legal advice."

8 So, I just want to state that before asking a
9 couple of questions, and it'll tie to some of the other
10 appointees as they come or return to the table before us.

11 But Ms. Eng, in reading your file, you have quite
12 a bit of opposition to your confirmation. And amongst the
13 letters and testimony that we received, some of the comments
14 brought to our attention include statements such as, quote, "It
15 is clear that Ms. Eng either does not understand or respect the
16 law that governs her hearings."

17 Another that says that your hearings have been
18 very inconsistent, quote, "very inconsistent," in describing
19 your abusive and predetermined attitude towards these hearings.

20 Another quote,

21 "Commissioner Eng does not comply
22 with the Board's regulations, and
23 when cautioned on that by counsel
24 or when objections are raised by
25 counsel for the purpose of getting
26 the hearing back on track, Ms. Eng
27 becomes obstinate, obstructive, at
28 times insulting and irrational."

1 What would lead people to say that about you or
2 how you conduct these hearings?

3 MS. ENG: I will say that I did have an
4 opportunity to see some of these letters. And I'm going to be
5 honest with you, Senator. I was absolutely appalled, because
6 that is contrary to how I conduct myself.

7 And I recognize I'm not there for a popularity
8 contest. There are going to be things that, whether it's
9 defense counsel or district attorneys, they aren't going to
10 agree with, and that they might get their feelings hurt. And I
11 have to overlook that because I conduct myself in a professional
12 manner. And I manage my hearing room.

13 And there are going to be people that are going
14 to take exception to that and make accusations, but I've got a
15 long history of not just doing these hearings, but of running
16 efficient meetings, always keeping in mind what the goals and
17 objectives are.

18 So, I know that these are -- but I do follow,
19 based on the training, I follow the law. And I've always done
20 that, and that has been consistent.

21 SENATOR PADILLA: And I appreciate what you're
22 saying. At times, when this Committee is in receipt of one
23 person's complaints, or one letter, or one witness in
24 opposition, we put it in the proper context.

25 But when we get repeated letters or repeated
26 individuals coming forward, then it just raises it to a
27 different level.

28 Based on your response, are you suggesting also

1 that it is untrue, the allegations that we've heard, that you're
2 much more favorable in terms of time and tenor as well to DAs as
3 opposed to inmates before you for parole consideration?

4 MS. ENG: Absolutely not, because there are many,
5 many times that I will actually interrupt the representative
6 from the district attorney's office if I feel that they're going
7 too far, and likewise.

8 My whole thing is focus on the inmates and not on
9 everybody else in the room. It's really on the inmates because
10 that's their hearing.

11 So, and again, I know that I have probably
12 stepped on toes with the district attorney's representatives,
13 too, when I have stopped them. It all depends upon what's going
14 on during the hearing.

15 SENATOR PADILLA: It's pretty clear to us, or to
16 me anyway, that the role of the prosecutor is specifically
17 defined as I read to you from the Code of Regulations. All we
18 had to do is review transcripts to see if what you're saying is
19 more accurate, or what those opposing your confirmation is more
20 accurate.

21 My last question for now is, can you describe to
22 us in your words what the battered woman's syndrome is, or
23 what's now known as a little bit different --

24 MS. ENG: Intimate partner battering.

25 SENATOR PADILLA: -- intimate partner syndrome?

26 MS. ENG: I know that is one factor, especially
27 when you --

28 SENATOR PADILLA: Can you just define what the

1 syndrome is for me?

2 MS. ENG: I can't really explain that. I haven't
3 been dealing with that at all.

4 And I'm going to be honest with you, I have not
5 reviewed that. And I know that I have it within my Title 15 at
6 my disposal at all times.

7 SENATOR PADILLA: Thank you very much.

8 MS. ENG: Okay.

9 CHAIRMAN PERATA: Anybody here in support?

10 Welcome.

11 MS. PING: Senators, Committee Members, my name
12 is June Ping. I am a member of probably the largest California
13 organization, a politically powerful organization.
14 Unfortunately, sometimes a misled organization.

15 I am here as a California taxpayer. I have no
16 political agenda. I am not here to champion any cause. I have
17 no axe to grind.

18 I am here to urge you to reconfirm Commissioner
19 Eng, and I hope to prevent a travesty.

20 I also want to let you know that I hold you
21 Senators accountable. I am outraged that some of you will base
22 your decision not on the job performance of Commissioner Eng,
23 but because you want to send a message to Governor
24 Schwarzenegger at the time when the backlog of life hearings is
25 at an all-time high, around 1400 and growing, and costing
26 taxpayers like myself millions of dollars because of the
27 frivolous lawsuits from the inmates.

28 This is not a time to play politics. I am tired

1 of having my tax dollars wasted.

2 If any of you have ever had the opportunity to
3 sit in in one of Commissioner Eng's hearings, I think you would
4 agree that she is one of the more articulate, astute, law
5 abiding, fair-minded and respectful people for the job.

6 It is very easy for a select few to say
7 disparaging comments and unfounded statements. Commissioner Eng
8 has honesty and integrity. Can those select few claim the same?

9 When Governor Schwarzenegger appointed Ms. Eng,
10 a Democrat from the private sector, not law enforcement, he
11 couldn't have made a better choice. A year ago, you all
12 supported and confirmed Commissioner Eng and Commissioner
13 Martinez. They continue to review cases since then, to make
14 sound decisions on a hearing-by-hearing basis. They are
15 committed to their jobs. They are doing their job.

16 As you stated last year, Senator Perata,
17 Commissioner Eng and Commissioner Martinez are the new face of
18 California. I'm here today to remind you of that.

19 Thank you for your time.

20 CHAIRMAN PERATA: Let me ask you a question.

21 MS. PING: Sure.

22 CHAIRMAN PERATA: Do you belong to any other
23 organizations?

24 MS. PING: I'm a parent.

25 CHAIRMAN PERATA: I mean, it's unusual that we
26 get people that just happen to be interested in a subject like
27 this, so I was just wondering.

28 MS. PING: I was here last year at the

1 confirmation of Commissioner Eng and Commissioner Martinez. I
2 am Commissioner Eng's sister.

3 CHAIRMAN PERATA: That explains it. That's
4 good. I was just curious. Nothing wrong. She has to have a
5 sister.

6 MS. ENG: But I asked her not to come.

7 MS. PING: Commissioner Eng asked me not to come
8 here today. She did not know what I was going to say.

9 She also asked my father not to come today, but
10 fortunately he won't be speaking today.

11 [Laughter.]

12 CHAIRMAN PERATA: Thank you.

13 MS. PING: Is there anything else?

14 CHAIRMAN PERATA: No, that's fine.

15 Would you like to introduce your father?

16 MS. ENG: Yes.

17 CHAIRMAN PERATA: You don't have to introduce
18 your sister. We took care of that.

19 MS. ENG: My 90-plus-year-old father is in the
20 audience here against my wishes. He insisted on coming up.

21 CHAIRMAN PERATA: Man, if you're 90-something,
22 you can go anywhere you want to go. Good for you.

23 [Laughter.]

24 MS. ENG: I don't know if he can hear, because
25 they may have removed his hearing aid batteries. But that is
26 Edward Eng in the audience.

27 CHAIRMAN PERATA: Welcome.

28 Yes, ma'am.

1 MS. WARD: Good afternoon. My name Chris Ward.
2 I'm the Director of the Crime Victims Action Alliance.

3 For those of you who are familiar with our
4 organization, I'm sure you're quite aware that over the last
5 almost three years, we've been quite critical of the Parole
6 Board and the Commissioners.

7 And I'm here to speak in support of Commissioner
8 Eng. When Commissioner Eng was appointed to the Board, I
9 personally and our organization was somewhat concerned because
10 -- specifically because of her background.

11 I had the opportunity shortly after she was
12 appointed to have a conversation with her. And interestingly
13 enough, the topic of battered women's syndrome came up.

14 I am a former battered woman, and 16 years
15 experience in working with battered women across the country.
16 I'm considered an expert in the field. I don't have my CV, but
17 I'd be happy to pass it on.

18 But in sitting down and speaking with Ms. Eng, I
19 was actually quite surprised to hear somebody who didn't have
20 much background in law enforcement or victims' issues to be as
21 well versed and well educated as she was on the topic.

22 So, in my opinion, she clearly gets it.

23 I also wanted to just touch briefly, Senator
24 Padilla, you made a comment about the letters in opposition. I
25 wanted to make sure that you all did receive the letters that
26 hopefully -- well, that came in this morning to your e-mails or
27 through the Governor's Office from victims and victims'
28 organizations in support of Commissioner Eng.

1 And I hope that you also do take into
2 consideration the positive support letters as well, and the
3 positive things that we have to say about Ms. Eng.

4 I certainly hope that you do take into
5 consideration we feel that she is a wonderful, well balanced --
6 and certainly, I am not always happy with some of the decisions
7 that she makes, but we feel that she conducts her hearing room
8 efficiently, and that she is fair, and takes everything into
9 consideration and makes a just decision regardless of whether or
10 not we agree with it.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. DE LA GARZA: Good afternoon. My name is
14 Alexis de la Garza. I'm a deputy district attorney from Los
15 Angeles. Go Celtics.

16 [Laughter.]

17 MS. DE LA GARZA: Having said that --

18 CHAIRMAN PERATA: Would you like to sum up?

19 [Laughter.]

20 MS. DE LA GARZA: Yes.

21 I've had the honor of being in hearings with
22 Commissioner Eng over the last year. And I'd like to say that
23 first of all, I was here at the last hearings. And the one
24 thing I heard repeatedly was, no more law enforcement, no more
25 law enforcement, no more law enforcement.

26 You have before you a candidate who had no law
27 enforcement background when she came to the -- to the board.
28 And now, we're being told, well, by the complaints that she

1 doesn't know the law, that the way she handles her hearings is
2 inappropriate.

3 I have sat in her hearings. And the one thing I
4 can say about Commissioner Eng is that she suffers no fools.
5 She is somebody who is direct and to the point, and it doesn't
6 matter whether --

7 CHAIRMAN PERATA: I met her sister. I understand
8 that.

9 [Laughter.]

10 MS. DE LA GARZA: Apparently it runs in the
11 family.

12 It doesn't matter whether she's talking to a
13 district attorney, an inmate attorney, or the inmate. If
14 somebody goes out of bounds and is not saying -- is not talking
15 about the issues that are of concern to the hearing, she will
16 basically let them know that this is not appropriate, that this
17 is not what we're all about in the hearing.

18 She is fair. She treats everyone with respect.

19 That somebody comes before this panel and says
20 that she is disrespectful of the process, I believe that if you
21 go through all the hearings, she is very concerned with due
22 process as it relates to the inmate, as it relates to the
23 process.

24 With respect to the question about battered women
25 syndrome, or whatever it's now being called, it's an unfair
26 question to ask this Commissioner. The reason it's an unfair
27 question to ask is that Commissioner Eng, to my knowledge, has
28 never had a hearing at a women's prison. The issue doesn't come

1 up in most of the men's prisons.

2 I've been doing these hearings for over four
3 years. I go out week after week after week. And the entire
4 time that I've been out there, there has only been one man that
5 has claimed this as a particular issue.

6 So, the fact that this is not an issue that she
7 is as familiar with as many other issues is -- should be of
8 little consequence.

9 One thing that really impressed me about
10 Commissioner Eng was that despite fact that she came from a
11 nonlegal, a corporate background, she had no criminal
12 experience, she was a very quick study. If there was something
13 that she was required to know before a hearing, you knew that
14 she was going to be prepared before she went into the hearing on
15 that particular date.

16 She prepares all of her cases thoroughly. And as
17 I said, she gives the inmate a fair hearing. She is somebody
18 who is going to make sure that all issues are concerned -- are
19 considered before she makes a decision.

20 And for those reasons, it is my position that she
21 should be confirmed.

22 And I believe that if the panel was true to its
23 words, saying that we don't want law enforcement, well you've
24 got somebody before you who comes to you without law enforcement
25 background. If, at the end of the day, some of the inmates'
26 attorneys are not happy with her decisions, at the end of the
27 day when I do hearings before her, sometimes I'm not happy with
28 the decision.

1 But that's not what should be of consequence.
2 It's, has she given it her full attention after weighing all of
3 the information, all of the evidence before her? Is she making
4 a decision based on what she thinks is the proper decision?

5 And I believe, time after time, she has proven
6 that that's exactly what she's doing. She doesn't take into
7 consideration what the DA wants, what the inmate's attorney
8 wants. It's what she feels is the appropriate decision.

9 And for those reasons, we feel she should be
10 confirmed. Thank you.

11 CHAIRMAN PERATA: Thank you.

12 Anyone further in support?

13 Opposition?

14 MR. CHANDLER: Good afternoon. My name is Keith
15 Chandler. I'm a former life term prisoner. For the last eight
16 years or so, I've worked for a law firm that specializes in
17 parole matters.

18 When Ms. Eng was originally appointed, I did not
19 appear to oppose her. I was very happy that the Governor had
20 nominated someone who wasn't the normal model of a Parole Board
21 official.

22 And my opposition is based on her year of
23 performance. Our firm has had only a couple of hearings with
24 Ms. Eng. We don't have any particular issue from those
25 hearings.

26 But her overall parole grant rate is
27 indiscernible from the law enforcement clique on the Board. And
28 for someone of her education and background to deny parole to

1 that many people, the vast majority of which are more than 20
2 years incarcerated, psychologically cleared for parole, and most
3 of them very well behaved inside the institutions, we feel -- I
4 personally feel is unacceptable.

5 We're not going to get change at the Parole Board
6 until we get rid of the idea that 97 or 98 percent of the people
7 that we see are unsuitable. That's just not the case.

8 And for an intelligent, articulate person, who
9 doesn't have the law enforcement background bias to come in and
10 then behave just like the rest of the Board members, I think it
11 reflects two things. It reflects that she's checking her
12 intellect at the door, and it reflects the institutional
13 problems of the Board.

14 And for that reason, I oppose her nomination.
15 Thank you.

16 CHAIRMAN PERATA: Thank you.

17 MS. HOFFMANN: Good afternoon. My name's Johanna
18 Hoffmann, and I'm a defense attorney working mostly representing
19 lifers at their parole hearings.

20 I also uniquely am the daughter of the victim of
21 an attempted murder. And notwithstanding that experience, I'm
22 still compelled to represent people and zealously advocate for
23 them when I believe they are suitable for parole.

24 I hope that the Committee as a whole takes into
25 account the potential risk that I am taking by making the
26 statement that I'm making today. I've also submitted some
27 written comments that I expect everyone has read, and I thank
28 you all for taking the time to do that.

1 Over the past two years, since her initial
2 appointment on the Parole Board, I've appeared before
3 Commissioner Eng on approximately 30 occasions, so I have
4 significant experience with her.

5 The examples that I'm going to be giving today
6 are from hearings that -- wherein Commissioner Eng granted
7 parole and in hearings where she denied parole. So, I'm not
8 simply complaining because I didn't get the result that I wanted
9 for my clients.

10 One of the most I would say contentious hearings
11 I had with Ms. Eng was a hearing where she did, in fact, grant
12 my client parole, and at the same time was extraordinarily rude,
13 refused to consider information that we offered, and otherwise
14 violated a number of my client's rights.

15 The first -- I'm going to provide two examples.
16 First example is at a recent hearing for a client of mine by the
17 name of Earnest Morgan, which just occurred in February of 2008.
18 And I provided, I believe, the Committee with the transcript
19 from that hearing.

20 I think I'm particularly -- I'm highlighting this
21 case for the Committee today particularly because of the comment
22 that Ms. Eng just made, that her focus at every hearing is on
23 the prisoner.

24 At this hearing, we had -- we submitted a
25 significant brief with a number of documents in support of Mr.
26 Morgan's parole, which included 19 letters from prison guards,
27 ranging from -- or from prison staff, ranging from an associate
28 warden, to lieutenants and sergeants, and a number of other

1 people.

2 Ms. Eng, instead of reading or looking at a
3 single one of those letters, stated the number of them that were
4 in the record and moved on. In her presentation to the
5 Committee today, that she focuses on the prisoner and wants to
6 ensure that they have the opportunity to be heard today, yet
7 fails to even read a sentence from a letter that is written by
8 prison guard or prison staff in support of that person, is a
9 little bit absurd to me.

10 She's shown a pattern of this behavior, refusing
11 to consider information, whether it is in support or opposition
12 of parole, and importantly, she's done this in a number of
13 hearings where I have been the defense attorney, stating that
14 she has a schedule that she needs to stick to.

15 I don't know if everyone here was present during
16 John Monday -- one of John Monday's confirmation hearings, but
17 there was a discussion during that confirmation hearing that the
18 schedule that the Parole Board currently operates under, which
19 allows for two hours for every hearing, is unreasonable.

20 I realize that may not be Ms. Eng's
21 responsibility to fix, but to violate rights and due process of
22 people appearing before her in order to stick to a schedule that
23 the Board knows to be unrealistic is improper.

24 The second example that I offer is from a hearing
25 last year for a German Yamboa, wherein Commissioner Eng allowed
26 for the participation of two district attorney representatives
27 from San Francisco County, although I requested and received
28 confirmation at the beginning of the hearing that only one of

1 those representatives was going to be participating. And upon
2 objection, Ms. Eng informed me that I was not allowed to speak
3 at the time anyone else was speaking, allowing for both of their
4 participation, and allowing for the improper information to be
5 received onto the record, which evidences to me a lack of
6 knowledge and understanding of some very basic legal procedures.

7 I realize that this Committee is in a difficult
8 position, having not, I don't believe, sat in on any of the
9 hearings with Ms. Eng.

10 But what I leave with after almost every one of
11 those hearings is a feeling that she has been rude, abrasive,
12 and disrespectful to me, to my client, sometimes to victims, and
13 sometimes to the district attorney's representatives.

14 She -- I have no doubt she's been extraordinarily
15 nice to everyone here in your communications with her. I've
16 actually experienced her to be a very friendly person outside of
17 the hearing room as well.

18 But when that record begins, and when the hearing
19 begins, her demeanor completely changes, and she conducts
20 entirely unfair hearings, and is extraordinarily rude to
21 everyone.

22 For those reasons, I strongly oppose her
23 confirmation. Thank you.

24 MR. HANDLEMAN: Good afternoon. My name is
25 Scott Handleman. I'm an attorney for lifers at their parole
26 hearings. I've represented well over a hundred lifers before
27 the Parole Board and in front of ten current and former Parole
28 Commissioners, and probably an equal or greater number of deputy

1 commissioners.

2 And I went through my records, and I've
3 represented 23 lifers in front of Commissioner Eng.

4 First -- first of all, I do want to say that it
5 is somewhat difficult to come here today. And I hope that
6 Commissioner Eng would, of course, would not hold it against any
7 of my future clients in the event that she is reconfirmed, that
8 I'm speaking with regards to her reconfirmation today.

9 But the essential issue that I wanted to raise
10 here was that Commissioner Eng's pattern of denials in the cases
11 that I've been in front of her in, in my mind don't reflect a
12 -- following the mandate of the Penal Code, Penal Code Section
13 3041, which clearly states that, Subdivision (a),

14 "One year prior to the inmate's
15 minimum eligible parole release
16 date, a panel of two or more
17 commissioners shall normally set
18 a parole release date as provided
19 in Section 3041.5."

20 I'm excerpting, these are the relevant parts.

21 Subdivision (b), of course, is what provides the
22 qualification. It says,

23 "The panel or the board shall set
24 a release date unless it
25 determines that consideration of
26 the public safety requires a more
27 lengthy period of incarceration."

28 So, there is Penal Code Section 3041 creates a --

1 a liberty interest in parole, as has been recognized over and
2 over again by the federal and state courts. And the concept is
3 that, again, that parole shall normally be granted, even from
4 the initial hearing.

5 What I've noticed is that in every one of the
6 cases in which Commissioner Eng denied parole, she relied on the
7 immutable facts of the commitment offense as a basis for doing
8 so. Often this was -- the prisoner had been before the Parole
9 Board ten or more times.

10 And this is not unique to Commissioner Eng, but
11 the fact that there is a practice that is emerging here on the
12 Board of Parole Hearings doesn't mean that it's -- that that
13 practice is following the law.

14 So, I would point to one of the cases in which I
15 was in front of Commissioner Eng as an -- as an example of
16 this. It was the case of Hector Lopez, and it was a hearing
17 conducted last November in which -- it was an attempted murder
18 case in which there was no injury to the victim. The crime, no
19 injury whatsoever, none whatever.

20 And it was a prisoner with no prior criminal
21 misconduct whatsoever. And he incredibly had no prison
22 disciplinary history, not even a single 128 (a), which is the
23 minor rules violations. Nothing.

24 His psychological reports were exceptional. He
25 had had only three.

26 In June, 2007, John Raush said his risk of
27 dangerousness is considered exceptionally low for this
28 population, average for the wider society. In 2006, his

1 penultimate psych report, a different psychologist, who
2 concluded Mr. Lopez appears to show a low risk of dangerousness
3 and violence, whether inmates are incarcerated or in the free
4 society. And before that, his first psych report, yet a third
5 psychologist had stated, if paroled, Mr. Lopez will probably be
6 deported to Mexico. He does not appear to pose a threat to any
7 community he will be living in. I would predict his level of
8 dangerousness would be a low to no threat in the community.

9 So, this is a man who by all accounts was not
10 dangerous. And yet, I was shocked that -- when Commissioner Eng
11 gave him a two-year denial, which is the maximum that can be
12 granted to somebody who's convicted of attempted murder.

13 There are many cases -- there are other cases I
14 could point to like that. In my mind, there was -- there was no
15 basis for that.

16 And I would say that, you know, of the hearings I
17 represented -- I conducted in front of Commissioner Eng, she
18 granted parole in -- she did grant parole in two of those cases.
19 However, both of those cases were cases in which the prisoner
20 had received a new hearing by way of a Writ of Habeas Corpus
21 being granted by the judge, finding that the old denial was not
22 supported by any evidence. So, in that situation, Commissioner
23 Eng of course, naturally followed the implications of the
24 judge's ruling to grant parole. Without a Habeas ruling, I have
25 not experienced Commissioner Eng grant a date to anybody who I
26 have represented.

27 I feel that she, again, is not fair in -- in her
28 denials of parole to lifers. And for that reason, I oppose her

1 confirmation.

2 CHAIRMAN PERATA: Thank you.

3 MS. BUCHALTER: Linda Buchalter, attorney, here
4 to oppose the confirmation of Commissioner Eng.

5 I certainly agree with the last two speakers.
6 I've experienced the same. I've never had a grant of parole
7 from her for my clients.

8 And also, supporters said that she's outraged
9 that you don't judge her on her job performance.

10 I'm asking you today to please judge her on her
11 job performance. I will be specific in a moment to add to the
12 litany that you've just heard already.

13 The speaker also said, if only we had an
14 opportunity to sit in on her hearings. I've had those
15 opportunities, Senators. I can talk to you about them.

16 The district attorney said that she doesn't let
17 anyone go out of bounds. She doesn't even let us say within the
18 boundaries, Senators, and I want to be specific about that
19 also.

20 And she said that all issues are considered by
21 Commissioner Eng. In my experience, they are not because she
22 won't let me do my job sometimes.

23 Also, recently I had a hearing that was
24 shocking. You have the letter from me, I'm sure, on the subject
25 that I want to talk about.

26 First of all, I watched her. I was doing my
27 advocacy closing statement on behalf of my client, and I watched
28 her. And I could see that she was writing the decision already.

1 And she'd already indicated that she didn't want to hear a great
2 deal of what I had to say. And then there was a 19-minute break
3 while they rendered the decision and we were called back.

4 During that break time -- this was at, I believe,
5 over at Avenal, my client was put into a separate room with a
6 wall adjacent to the board room. I was put into different room
7 with -- where I could not hear anything. My client, however,
8 was able to hear the conversation between Commissioner Eng and
9 the deputy commissioner at the time. They were talking and
10 laughing.

11 The decision had already been made. I could see
12 the writing as I was watching and doing my statement.

13 And they were laughing, and they were mocking,
14 and they were making fun of his paltry job offer that he had in
15 his support letters. And he could overhear what they were
16 saying, and he was devastated by the laughter, and the mockery,
17 and the making fun of his job offer that was on the record by a
18 supporter of his.

19 And he was a very worthy candidate. He had low
20 risk assessments. He did not get a grant of parole, of course.

21 But I want to talk about the conduct further.
22 There's a great deal of case law now coming down through the
23 courts that are ruling in favor of the inmates. This law, of
24 course, Senators, is extremely relevant to the issues at hand
25 and to the board room scenario and the board room conversation.
26 So, I will speak to that law.

27 And when I was in my advocacy statement,
28 addressing the law, certain cases say you can't call this

1 especially cruel, or you can't call this atrocious unless -- and
2 many other kinds -- you can't use 128(a) counselling chronos as
3 factors of unsuitability because. So, I was beginning to cite
4 all this case law, and she said, "I don't want to hear any law.
5 Don't give me any law."

6 I was very handicapped because she was adamant
7 that I not cite the law. And my client and I were both
8 devastated at the end of the hearing, I might also add.

9 Also in the beginning, when my client is asked,
10 "Will you be speaking with us today?" After having been read
11 the rights, that you have a right not to, and it's a
12 constitutional right, of course, and needs to be obeyed.

13 When I -- my client has decided, we've made a
14 decision to not discuss the life offense, perhaps because it's
15 been talked about many times before, there's a record of it ad
16 nauseum in the file, perhaps, based on law enforcement officers,
17 probation officers, prior Board members, doctors, counsellors
18 and so forth.

19 So, I have a small statement I make, and that
20 statement is important to me to make when I say, "No, he will or
21 she will not be speaking with you today," because I have to
22 think of future readers of that transcript. Those future
23 readers are, of course, appellate courts, and it's very
24 important to have this on.

25 So, when I say "No, my client will not because,"
26 and I want to put the "because," because they've spoken about it
27 on many occasions, they have his version of the facts on the
28 record, she cut me off and refused to allow me to make my advice

1 statement. So, I felt very handicapped throughout the entire
2 hearing. And of course, he got a denial of parole.

3 And I've had other hearings. This is one
4 specific hearing, but I've had other hearings where the same
5 conduct has prevailed, only maybe not quite as bad, and no one
6 heard the mocking the way my poor client did, hurt him, making
7 fun of her [sic] with the DC.

8 So, I just ask you to take my letter into
9 consideration. Judge her on the job performance that we
10 attorneys -- I mean, I've done over 2,000 hearings. I've been
11 doing this since 1993, so I am conversant with protocol and the
12 way behavior should be.

13 But I also would like to be allowed to do my job
14 for my client, because in case it does have to go to court, I
15 want that record to be complete. I need the law in there. I
16 was not allowed to do that.

17 So, I ask you to not confirm this Commissioner.
18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MR. MILLER: Good afternoon, Senators. I have
21 introduced myself before. My name is Donald Miller. And the
22 attorneys and firms that I work for and myself strongly oppose
23 the confirmation of Commissioner Eng for the reasons already
24 stated.

25 I would like to reinforce the fact that in many,
26 many, many hearings, the attorneys are not allowed to get
27 objections on the record, are not allowed to remind the
28 Commissioner what the law is. The Commissioner doesn't seem to

1 have an interest in that.

2 Secondly, it was mentioned by a previous nominee,
3 and I believe it came up here, that the previous nominee said
4 that the job of the commissioner is to determine the inmate's
5 mental state or mental status. And that's not true.

6 For every hearing, the Board has a professional
7 psychologist or psychiatrist to do that. And when the -- when
8 they determine, having considered the same commitment offense,
9 and all of the facts in the record in a ten or twelve-page
10 thorough, exhaustive evaluation that the prisoner poses a low,
11 if any, risk at all to society at this time, sure, a
12 commissioner has discretion to disagree with that, but has to
13 give a reason for it, has to give some evidence. They just
14 can't speculate and recite the same facts that you're unsuitable
15 for parole, as Ms. Eng does hearing, after hearing, after
16 hearing.

17 It was said just a few minutes ago, somebody
18 expressed outrage at the cost to the taxpayers and the backlog
19 of hearings. One of your predecessor legislatures, when they
20 passed the law requiring nine commissioners on the Board, that
21 that would have been a sufficient number without ever having a
22 backlog.

23 If the commissioners that were appointed would
24 follow the law and normally grant parole when that person no
25 longer presents a risk to public safety, there would be no
26 backlog.

27 And as far as the cost to the taxpayer is
28 concerned, the greatest cost is keeping people in prison who no

1 longer pose a risk to public safety, instead of getting them out
2 to paying their taxes again and being a productive member of
3 society.

4 Because there's very little respect for the law
5 or for the parties by this particular nominee, and because of
6 the manner in which she's performed, we strongly oppose the
7 confirmation of this commissioner. Thank you.

8 CHAIRMAN PERATA: Thank you.

9 Anyone further?

10 Would you like to respond or sum up?

11 MS. ENG: My turn?

12 I do respect everybody's opinion. Everybody will
13 have an opinion.

14 And again, I stand by my record. And I know
15 going in there that there's going to be parties that are going
16 to be unhappy.

17 And bottom line is this. When I conduct those
18 hearings, I do my best to interface directly with the inmate.
19 That's why I'm there. It's not to make friends with the
20 district attorney or with the defense counsel there. My
21 objective is pretty clear. It's to interface, one-on-one, with
22 every single inmate, and to try to peel back the layers, I
23 should say, in trying to determine whether or not those factors
24 of suitability are met.

25 And again, I'm proud of what I've done. I stand
26 by it.

27 CHAIRMAN PERATA: Okay, fair enough. Thank you.

28 And finally, Edward Martinez.

1 Mr. Martinez, welcome.

2 MR. MARTINEZ: Thank you, Senator. Good
3 afternoon.

4 Mr. Chairman and Members of the Committee, I
5 would like to again thank you for giving me this opportunity
6 once again to come before you here today in my second
7 confirmation.

8 As you well know, I do come from a background of
9 law enforcement. And certainly in addition, I do have also a
10 background in the private sector for many years that does
11 include criminal defense investigation as well as compensation,
12 workers compensation, that field as well.

13 This certainly, I feel, has given me a well
14 rounded perspective from a -- certainly a defendant's point of
15 view, when I was working with the criminal defense. But
16 certainly this expertise has been very useful, I feel, in my
17 duties as a Parole Commissioner.

18 And so with that, I do welcome any questions that
19 you may have, sir.

20 CHAIRMAN PERATA: Senator Padilla.

21 SENATOR PADILLA: Mr. Chair, I'll ask the same
22 questions that I asked the previous appointee.

23 First, regarding the definition of the role of
24 the prosecutor in the code, and keeping the role of the
25 prosecutor to commenting on the facts of the case, and
26 recommending what the appropriate disposition is, but not
27 necessarily being allowed to question, let alone interrogate,
28 the person before you for consideration of parole, do you think

1 you abide by that rule? And what would you say about complaints
2 that you do not?

3 MR. MARTINEZ: Well again, certainly I do have a
4 good knowledge as far as the role of the prosecutor and what
5 they're there for, as well as the role of the prisoner's
6 attorney.

7 And I try to be as fair as I can in dealing with
8 all parties throughout that particular hearing, and afford
9 everyone the opportunity to say what -- present their case.

10 SENATOR PADILLA: And I appreciate that. You
11 should treat everybody fairly.

12 But the concern that's been brought to the
13 attention of this Committee is that you, first of all, allow at
14 times a DA to question directly the person before you for
15 consideration.

16 Do you agree with that, or do you disagree with
17 that?

18 MR. MARTINEZ: I disagree with that.

19 Again, I try to maintain again and manage my --
20 my hearings. I think that's certainly one of our duties that we
21 have, and to continue to facilitate throughout that hearing, and
22 provide everyone involved with the -- again, the opportunities
23 that they are entitled.

24 SENATOR PADILLA: Onto the next issue, can you
25 describe to me your understanding and experience with intimate
26 partner battering?

27 MR. MARTINEZ: Yes, sir.

28 Intimate partner battering, again, these are the

1 effects of, first, emotional, mental abuse that possibly might
2 be inflicted on a victim of domestic violence. That in turn
3 certainly could add to the criminal behavior in that particular
4 -- in that victim and certainly looked at as in the
5 victimization of that particular individual so in a sense,
6 again, based on their actions of the domestic violence, we could
7 attribute their criminal behavior.

8 SENATOR PADILLA: In your experience in some of
9 your hearings, was this a consideration or a factor?

10 MR. MARTINEZ: It is -- it is a consideration.
11 It's certainly a mitigating factor that can be used in
12 determination of suitability as well as used as a factor for
13 setting a base term as well.

14 And I feel that I have very good knowledge in
15 that area of intimate partner battering or battered woman's
16 syndrome that it used to be referred to.

17 SENATOR PADILLA: Similar to as I did with Ms.
18 Eng, I just want to pull a couple of quotes from letters and
19 complaints we've received in opposition to your confirmation.

20 One that explains an example of where there was
21 an inmate by the name of Mr. Lopez who suffered from
22 complications of Hepatitis C. And after waiting for eight hours
23 in a small temporary cell to attend his parole hearing, reported
24 that he was extremely weak and dizzy, and could not attend the
25 hearing at that time.

26 Yet despite this, you, Commissioner Martinez,
27 insisted on holding the hearing without Inmate Lopez present.
28 And this is not the first occasion in which Mr. Martinez has

1 been oblivious to an inmate's condition and due process.

2 I have another example where, quote,

3 "The hearing transcript confirms
4 Commissioner Martinez's ignorance
5 of the regulations and refusal to
6 abide by them, unwillingness to
7 comport his hearings to even
8 minimum due process, and his
9 complete lack to any
10 qualifications to conduct parole
11 hearings."

12 A third example,

13 "Mr. Martinez has proven his
14 allegiance is solely to his
15 appointer and not to the
16 Constitution or state law, both
17 of which he ignored."

18 Again, when there's only one or two instances of
19 opposition or concerns, we can almost always anticipate that.
20 But when there's repeated in a number of letters, and
21 complaints, and concerns communicated to not just my office, but
22 I venture to say this entire Committee, we have no choice but to
23 ask what would make so many people think this about you, say
24 this about you in how you carry out your duties?

25 MR. MARTINEZ: Well, the way I carry out my
26 duties are consistent. And that is that I approach them in the
27 same manner in reference to dealing with all parties, and that
28 is in a respectful manner, and certainly consideration for any

1 issues that may come up again.

2 That particular case that you referred to of, I
3 think, Mr. Lopez, I am not really well versed on that in
4 reference to what that situation was.

5 But, you know, that certainly does involve ADA
6 accommodations, if that's an issue regarding whether those
7 things are met. And I'm very, very well aware of that and the
8 importance of it, and how we need to constantly maintain those
9 -- those issues regarding -- addressing them, specifically with
10 inmates. So again --

11 SENATOR PADILLA: You don't recall an instance
12 where there was an inmate scheduled who claimed to be too weak
13 to go through with the hearing, and your insistence upon going
14 forward without the inmate present?

15 MR. MARTINEZ: I'm not very -- I don't have any
16 knowledge of that, sir, and I apologize.

17 SENATOR PADILLA: Thank you.

18 CHAIRMAN PERATA: Anyone here who'd like to speak
19 in support of the nominee?

20 MR. MANER: Good afternoon. My name is Doug
21 Maner. I'm a deputy district attorney from Stanislaus County.
22 I'm also a member of the CDAA Lifer Committee.

23 I wasn't planning on speaking today. And I was
24 going to let the other members of the committee address the
25 board as a group with regards to their thoughts.

26 However, as I was sitting the back row listening,
27 I heard the comments of Mr. Lopez's lifer hearing. And I
28 remember that very well because I was at that hearing.

1 And you can read the transcript, and I urge you
2 to do so, because my recollection of the hearing is that the
3 inmate was not cooperating with the process. He was stalling.
4 He did not want to have the hearing because the victim's next of
5 kin were present, and they wanted to address the Commissioner,
6 as they'd driven quite a distance to be there. And it was a
7 stall tactic by that individual defendant to stop the hearing.

8 So, I urge you, please, don't take the inmate's
9 word solely. Look at both sides of the story. If there's a
10 particular issue you're concerned about, take the time to read
11 the transcript.

12 I've submitted a letter in support of
13 Commissioner Martinez, as has District Attorney Fladager, and I
14 assume you have them before you. I'm not going to repeat what I
15 said there, but I wanted to address that one individual issue.

16 CHAIRMAN PERATA: Thank you, appreciate that.

17 Others?

18 Anyone in opposition?

19 MR. MILLER: Good afternoon once again. I'll be
20 very brief. My name is Donald Miller.

21 The Committee has the transcript of the hearing
22 that was just described. At that hearing, the Commissioner
23 Martinez did not do as required. He did not even read the ADA
24 statement at the beginning of the hearing to determine whether
25 the inmate was well enough to continue.

26 The inmate had been kept this a holding cage for
27 eight hours, waiting for the hearing, and had repeatedly asked
28 to be taken to the infirmary or back to his cell where he could

1 rest. He was obviously sick, at least from the transcript.

2 And here is an illustration. The district
3 attorney who just spoke was allowed to participate in the
4 decision as to whether the hearing should go on or not. That's
5 not permitted. That's not the role of the district attorney.

6 The role of the district attorney is set by law.
7 It's to present an opinion from the district attorney's office
8 on whether that inmate is suitable for parole or not, and to
9 present any evidence on that subject to the Board. The district
10 attorney may ask a clarifying question of the panel. The
11 district attorney is not allowed to interrogate the inmate.

12 At this particular -- that transcript illustrates
13 how that was violated. And at Commissioner Martinez's hearings,
14 time after time the district attorney is even encouraged to even
15 cross examine the inmate, turning the hearing into an adversary
16 proceeding, which it's not.

17 The hearing is a fact finding proceeding to allow
18 the panel to make an accurate assessment of whether that inmate,
19 if released, would pose an unreasonable risk to public safety.

20 And this is a perfect illustration of the abuse
21 of the ADA, the abuse of the prosecutor's role, and it's typical
22 of many of the transcripts that I've read of our clients at
23 hearings that are chaired by Commissioner Martinez.

24 So on that basis, we strongly oppose the
25 confirmation of the Commissioner. Thank you.

26 CHAIRMAN PERATA: Thank you.

27 MR. CHANDLER: Hello. My name's Keith Chandler.
28 I introduced myself previously.

1 I'm here to talk again, oppose Commissioner
2 Martinez's nomination in particular based on the case of Mark
3 Chandler. He's no relation to me. We just happen to share the
4 last name.

5 Mr. Chandler had been a model inmate for more
6 than two decades. He was not the actual killer in this case,
7 and the actual killer had been released from prison many years
8 before. Frankly, I have no idea why this man's still in prison,
9 and I don't think anyone at the Board could articulate a reason
10 either.

11 Mr. Martinez heard Mr. Chandler's parole hearing
12 in 2006 and granted him parole. The Governor reversed the
13 decision. Our law firm is challenging the Governor's reversal.

14 When Mr. Chandler came back up for parole in
15 2008, a very important thing happened that I want to really make
16 sure the record is clear about. Penal Code Section 3041
17 mandates that Board members hear cases repeatedly. There's a
18 mechanism in 3041 that says that when practical, a Board
19 member's supposed to be assigned to hearings of inmates he had
20 before.

21 The reason for that, to be very clear, is because
22 as a Board member sees inmates from year to year to year, they
23 can develop somewhat of a relationship with him and gauge their
24 progress. So, that was a legislative mandate that I think is
25 very wisely in place and should never be disregarded. And in
26 this case, it was.

27 Mr. Martinez knew from his preparation for the
28 hearing that this inmate was going to challenge a denial of

1 parole. He had done it once before and won a Writ of Habeas
2 Corpus, which is why the new hearing when he was ultimately
3 granted parole, which was then reversed by the Governor.

4 Mr. Martinez knew he had voted for parole, and
5 then he knew that the Governor opposed it. So, he was in quite
6 a pickle. If he went through with the hearing, he was -- he was
7 likely going to deny parole because that's what the Governor
8 wanted. And then he would essentially be setting that inmate up
9 to win a writ again because he would have changed his vote for
10 no reason other than the Governor's opinion being expressed.

11 Well, the only other option he had was to bail
12 out and postpone the hearing. He couldn't go through with it,
13 or he'd give the inmate -- he'd give our law firm the ability to
14 get they guy out of prison.

15 So, he postponed the hearing. He violated the
16 legislative mandate that he be the one to hear the hearing. You
17 have the hearing transcript there. What he says is, "I think we
18 should have another set of eyes on it."

19 With all due respect to the Commissioner, his
20 eyes are the ones that were mandated by law to be on it.

21 Mr. Chandler had to wait another six or seven
22 months to get a parole hearing. He was granted parole again,
23 and that's in decision review now. Hopefully, they will do the
24 right thing and let this man go. He did not kill the individual
25 he's in prison for. The actual killer has been free for years.

26 The reason why I think this case is a very
27 important illustration is because it shows the thought process
28 that the Board, in particular Commissioner Martinez, goes

1 through. And that is, what does the Governor want us to do, and
2 how can we accomplish it?

3 In this case, victims that traveled a very long
4 way to come to the hearing, he completely disregarded that.
5 They had to just go home because his political agenda was, I
6 can't have this hearing today. Mr. Chandler appeared for the
7 hearing. He was prepared. To heck with him. He can just wait,
8 come back in a few months.

9 And the legislative mandate that he hold the
10 hearing were violated.

11 And I just think -- I think it's critical when we
12 put people to sit in judgment of those who break the law, their
13 fundamental idea has to be: They're going to comply with the
14 law. You don't deserve the right to sit in judgment of others
15 for breaking the law if you can't comply.

16 And in this case, Commissioner Martinez, even if
17 we assume the best case scenario, he didn't know that the inmate
18 had due process right to a timely hearing; he didn't care about
19 the victim's rights, and he didn't care about the legislative
20 mandate that you hold. So at best, he's incompetent. At worst,
21 he is the political animal I personally believe he is, which is
22 why he disqualified himself from the hearing. Either way,
23 Commissioner Martinez isn't fit for this job based on his
24 performance in this case.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 Our Republican colleagues are very concerned
28 about your meal and rest period rights. So, we're going to take

1 a 15-minute break.

2 [Thereupon a brief recess was
3 taken.]

4 CHAIRMAN PERATA: We're going to convene now.
5 Our next witness.

6 MS. BUCHALTER: Linda Buchalter, attorney.

7 I would like to continue in the same vein as the
8 last speaker, and I have a specific hearing.

9 I believe I sent you letters concerning this,
10 including my complaints.

11 The fact that Commissioner Martinez does not seem
12 to want to apply the law, and my clients are society's least
13 favorite citizens, and if the law doesn't work for them,
14 Senators, it's not going to work for you and me at the next
15 level.

16 And I think it's really, really important that
17 these hearings and the Commissioners work for them so they get a
18 fair shake in accordance with their court sentence, because I
19 have rehabilitated people who are rotting in prison over and
20 over and over. And Commissioner Martinez has never given one of
21 my clients a date, the few times I've been before him. And they
22 were all deserved by any objective measure.

23 In this particular hearing, talking about not --
24 not caring about what the law says, he denied -- I had a client
25 who was a kidnap for ransom. There was no harm done whatsoever
26 to the victim. He was kept -- it was a drug deal gone wrong. My
27 client has -- has a claim of innocence always, and there was --
28 he was convicted on practically no evidence. And the victim was

1 never hurt, and it was a kidnap for ransom, and he went home
2 free. And it was the wrong victim anyway.

3 And so, my -- my client got another two-year
4 denial for a crime where he wasn't even present. There was no
5 harm done to a victim.

6 And we also have a letter in the file exonerating
7 his activities by the co-defendant, who's also serving time in a
8 California State Prison.

9 So, I tried to get the transcript of May 14 for
10 Mr. Llama's hearing and was unable to do that. The Board said
11 it's too soon. They couldn't provide it, and your offices
12 couldn't get it either.

13 But I did -- I did make notes during the
14 decision. And I just would like to synopsis some of them for
15 economy of time today.

16 For example, I said that the law states that you
17 cannot call a crime exceptionally cruel and callus unless the
18 victim was made to suffer in some exceptional way. That is the
19 law in a court case.

20 So, my denial, Commissioner Martinez said, oh,
21 and we deny because this was an exceptionally callous disregard
22 and cruel manner for the victim. Totally contrary to what I had
23 just stated.

24 He also talked about -- the Title 15 says that
25 prior assaultive, violent crimes are to be considered, and for
26 what duration is up -- is discretionary, I'm sure.

27 My client over 30 years ago, he was illegal, and
28 he brought -- he smuggled his friends and family in, and was

1 stopped at the border. That's not violent.

2 A federal officer at one time beat him with a
3 baton. He took the baton, and he got charged with assaulting
4 the officer. That was 30 years ago.

5 So, the denial also stated that his prior record
6 was being held against him to deny him for two years a grant of
7 parole.

8 One 128a counseling chronos in the prison system
9 in California, or counseling chronos only. In the re Smith
10 case, 2002, has held that they cannot be used as factors of
11 unsuitability because they do not rise to that level.

12 As a part of the two-year denial, he cited the
13 fact that he had some old 128(a)'s also.

14 He had a 115 that was recent. That's a very
15 serious disciplinary action. He was -- my client was
16 transferred from Chuckawalla Valley State Prison to his current
17 institution, and he had a heating -- a water heating device.
18 It's a little device to heat water in a cup. He had had it for
19 four years. It was transferred with his belongings, and he
20 didn't know he couldn't have it. He assumed that all states
21 were the same -- all prisons were the same, and he got a write-
22 up when they found that in his locker.

23 So, he held that against him also, even though
24 there was a tremendous amount of mitigation. And Commissioner
25 Martinez said, well, he showed a great lack of judgment. He had
26 nothing to judge on. He didn't know that that was not
27 permitted. So, I found that to be contrary to the evidence
28 also.

1 The -- he had a low risk assessment from his
2 forensic mental health evaluator. However -- and it was low
3 risk, and it was a very favorable report. But Commissioner
4 Martinez said, well, it's not totally supportive. There's
5 nothing in the law that says you have to have a totally
6 supportive report anyway. And the risk assessment, which is
7 what we're looking for, and why we pay this heavy expense for
8 these psychologists and psychiatrists, said he was a low risk,
9 but it made no difference to Commissioner Martinez.

10 Every case and every point that I cited in favor
11 of a grant of parole for my client was ignored by Commissioner
12 Martinez, and he absolutely ruled to the contrary on each and
13 every point.

14 He -- my client is now 63 years old. He wanted
15 him to take parenting classes. He ordered him to do that.

16 My client came into prison as a very successful
17 businessman in the community in Los Angeles. He had -- he makes
18 about 60,000 a year still. He has a neighborhood market that's
19 still very -- very valuable and makes a lot of money. He owns
20 property outright. He rents places that are paid for. He owns
21 -- he has no mortgage on his house. He has properties in
22 Mexico. So, he's a very substantial businessman.

23 However, Commissioner Martinez said that he
24 advised him that he should get some kind of a vocational, just
25 in case the business closes up. And yet, it's been there over
26 30 years, very substantial, still substantial, which his wife
27 and his family take care of and run for him. He has no
28 financial needs whatsoever on the outside. But he felt that he

1 needs a vocational.

2 My client is very distraught. Like, I'm 63.
3 What? Do I go? I even pointed out, what is he going to do?
4 Take construction courses that he will never, ever use? Or auto
5 mechanics, which won't benefit him in the community whatsoever?
6 But he insisted that he have some kind of vocational skills.

7 He also said that you should read books and do a
8 book report, which I thought unusual because he said, this way,
9 it'll show that you're not lacking progress.

10 So, my client says, what kind of a book do I
11 read? There was no guidance for that. But if he doesn't do
12 that, and he disobeyed a Board command, the next time he's
13 around, that will be held against him.

14 Therefore, Commissioners, again we have a law
15 enforcement officer judging my clients. We are a nation of
16 second chances, and we do have -- and that's why we have a
17 parole system. And that's a direct quote from our President
18 Bush a couple of years ago on his nation-wide address.

19 And this system has to work. We have to have
20 people who let rehabilitated people go home by all objective
21 measures. And Commissioner Martinez is not one who's doing
22 that.

23 In my opinion, he is exactly like a police
24 officer gathering evidence for a trial. And I don't believe he
25 should be confirmed. And I respectfully ask that you not
26 confirm him.

27 CHAIRMAN PERATA: Thank you.

28 Best I can tell, you're the first person ever to

1 quote George Bush in here.

2 [Laughter.]

3 MR. HANDLEMAN: My name is again, to briefly
4 reintroduce myself, Scott Handleman, a lifer attorney, conducted
5 many lifer hearings.

6 And I'm also going to oppose the reconfirmation
7 of Commissioner Martinez again because I find that his -- he
8 invokes the nature of the commitment offense to deny parole time
9 after time in the cases in which I've appeared in front of him.
10 So, I'll just give one example.

11 On April 17th, in the case of a Gerald Collins,
12 he -- this was a man who had been found suitable for parole by
13 the Board on two previous occasions, only to have both of those
14 suitability findings reversed by the Governor. This is a man
15 who was approaching his third decade of incarceration. And a
16 man who had zero serious rules viola -- a man who, before his
17 commitment offense, had only, I believe, a petty theft as far as
18 prior record.

19 And subsequent to his incarceration, had zero
20 serious rules violations, and only two of the minor misconduct
21 violations, and going on three decades of incarceration, well
22 over two decades.

23 His psychological report assigned him a low risk
24 of reoffending. And indeed, every single one of his
25 psychological reports for the prior ten years had been
26 favorable. And he continued to pace with the array of self-
27 help programs. He had good parole plans.

28 Commissioner Martinez gave the man a one-year

1 denial based on, again, the immutable facts of the offense. In
2 my mind, that's -- that typifies the approach, again, which has
3 been taken by other Commissioners, Commissioner Martinez is not
4 alone in this. But I don't believe it abides by the mandate of
5 Penal Code Section 3041, which creates the liberty interest in
6 parole.

7 And, you know, there have been a number of
8 federal cases that have been saying that it's a due process
9 violation to deny parole continually on the basis of the
10 commitment offense. That turns an indeterminate sentence
11 effectively into life without parole. You can look at Heyward
12 v. Marshal, which is a recent Ninth Circuit case, or a number of
13 others along those lines.

14 And for that reason, I oppose Commissioner
15 Martinez. Thank you.

16 CHAIRMAN PERATA: Thank you.

17 Anyone further?

18 Sir, would you like to have the final word?

19 MR. MARTINEZ: Yes, sir, if I may.

20 I'd like to comment on that particular case that
21 was brought up here, Mr. Chandler by Mr. Chandler.

22 One of the things that occurred with that
23 particular hearing, again, I was the granting panel a year
24 prior, and it did come up again. And at that time, I felt I
25 didn't have the necessary tools. I'm not trying to use that as
26 an excuse, but I felt not comfortable in making a decision at
27 that time in regards to moving forward.

28 And so therefore, I erred on the side of caution

1 based on that. I felt that I didn't have enough information
2 that I should to move forward.

3 And certainly, it all basically went to my
4 concerns in regards to the inmate, and his rights and due
5 process. And I did certainly take into consideration that by
6 postponing that hearing, it was going to delay that. But I felt
7 that at that point in time, that was in the best interest for
8 this particular individual, Mr. Chandler, in doing that.

9 I know that it was quoted in saying to having a
10 fresh set of eyes look at it, and I sincerely meant that. I
11 felt that that would -- maybe a sense -- if he was given an
12 opportunity by another Commissioner to take a look at it, since
13 I had just recently, and I felt that it was just recently had
14 looked at it, that I thought it might -- it would be certainly a
15 better -- better for him.

16 And again, it was all in regards to making sure
17 that I did not step on his rights and -- at that point in time.
18 So again, this is where I was looking at it.

19 CHAIRMAN PERATA: Thank you.

20 MR. MARTINEZ: But again, just to finish, but if
21 I was to -- I mean, I certainly would not make that same
22 decision here today in regards to looking at it now, that every
23 hearing is a de novo hearing.

24 CHAIRMAN PERATA: Thank you.

25 MR. MARTINEZ: Thank you, sir.

26 CHAIRMAN PERATA: You may go back to the audience
27 for a few minutes.

28 Now, anybody who wants to talk about general

1 things, come on up.

2 MR. WARREN: Thank you, Senator Perata.

3 First, if you took any umbrage at my comment to
4 Ms. Heyho, please excuse me. Yesterday, she and I were on
5 opposite sides.

6 I'm David Warren on behalf of Taxpayers for
7 Improving Public Safety.

8 Yesterday, Ms. Heyho and I were on opposite sides
9 of a bill. And if my flippant comment offended you, please
10 accept my apology.

11 CHAIRMAN PERATA: Was I there?

12 MR. WARREN: No, this was before we started the
13 session today, sir.

14 CHAIRMAN PERATA: Believe me, there's a long
15 line.

16 MR. WARREN: Many times I come here, and I tend
17 to be humorous, but today these things are far too serious to be
18 joking about them.

19 I come here today because of my general concern
20 of the entire tenor of the Board of Parole Hearings.

21 I have spent the last three years inside the
22 prisons with inmates, not just at Folsom, but I've actually
23 visited any number of institutions. And I see lifers that
24 disturb me, not because of the fact that they've committed a
25 crime and that they are incarcerated. But I find them in
26 wheelchairs. I find them suffering from CHF. People who are
27 clearly not a threat to public safety in any way, shape or form,
28 and who are continually denied parole, and who have become a

1 burden to the State of California, far -- based solely upon a
2 commitment offense.

3 We need look no farther than Brent Volderoch
4 today, who is comatose. He's clinically dead. He's costing the
5 State of California close to a million dollars a year, and he's
6 still in custody.

7 There has to be a better way. The Board of
8 Parole Hearings has abjectly failed too many of these
9 individuals. What they did 25, 30 years ago was horrible, but
10 people change. If we don't believe in that, then we don't need
11 parole. We don't need determinate sentences.

12 All we need to do is say, "You stole a cookie
13 today. We know you're going to be bad for the rest of your
14 life." Let's build a whole bunch of more prison cells, and
15 let's not worry about it.

16 What we've come to have today is a parole system
17 that is life without possibility of parole. I see inmates
18 who -- I see their parole applications, and I see their
19 subsequent denials. And they are told they have to do things
20 which are impossible because the Department of Corrections
21 doesn't provide the service that they are directed to complete.
22 They can't go to classes. They can't get an education. They
23 can't read books simply because of the interference of
24 lockdowns, lack of staff, et cetera.

25 I see men who have reformed. And I see them in
26 the worst situation: I see them dying. And these are men,
27 mostly men, who have reformed, who have rehabilitated, who have
28 faced their criminality and have changed.

1 There is a 60-year-old man at Folsom Prison who's
2 a devout Muslim. Forty years ago he killed a man. Today he is
3 a leader in religious education and teaches nonviolence. This
4 is a man who has found his way. And yet, he is repeatedly
5 denied parole because of the commitment offense.

6 What truly bothers me is, I see old men. And I
7 make jokes about myself, but men who are 50 years old, and who
8 are old. Who, if left out of prison, would make space to make
9 sure that the Brent, that the Jackson -- the man who shot the
10 police officer, there's a place for them in prison.

11 We keep forgetting that the elderly inmates are
12 the least violent. If we look at the State of New York, which
13 has a record of releasing individuals, the lifers, they have
14 less than a rate of -- a two percent rate of recidivism.
15 Whereas, when we release a 25 or 30-year-old, we have a pretty
16 good chance they'll be back.

17 My complaint with the Board of Parole Hearings
18 is, very simply, if they're saying that the California
19 Department of Corrections and Rehabilitation has a 99.99 percent
20 failure rate on rehabilitating people, what are we spending \$10
21 billion for? There's something wrong here.

22 I cannot believe that of the 5,000 people that
23 come before the Board of Parole Hearings, only 100 have been
24 rehabilitated. I see the people, and they are more than that.

25 And what really bothers me most of all is when
26 I'm at a women's prison, because most of the women are there
27 because they were involved in a crime where their boyfriend went
28 in and robbed a bank, or robbed a liquor store, shot someone,

1 and under the felony murder rule, they're in jail for the rest
2 of their lives.

3 There is a woman who's 62 years old, who was with
4 her boyfriend. This woman is so feeble that she needs to be
5 moved in a wheelchair. She needs to have her diapers changed by
6 other inmates, and she's still incarcerated and denied parole.

7 When I came here today, when I saw that the
8 nomination was coming up last month, I spread the word and asked
9 people for permission to use individual names and cases to
10 present to this Committee. I actually received over 100
11 responses from people saying, "Please use my name. Please
12 present it."

13 That was until last week. Last week, family
14 members started sending me e-mails. They started making phone
15 calls. I got a phone call at 3:00 o'clock this morning from a
16 family member desperate that their family member's name not be
17 used, because the "word," quote-unquote, is out: There will be
18 retribution.

19 I can't tell whether that's truthful or not. But
20 when I was a lawyer, if I had a panel of only 12 people to go
21 before, and you couldn't affidavit one of them for prejudice, it
22 would have scared the heck out of me.

23 So, I ask you to decline the nominees today for
24 one simple reason. There is a pervasiveness, a belief, a
25 predisposition that a person cannot succeed and rehabilitate
26 when they come before the Parole Board. And if that is the
27 predisposition, if that is the belief, then we have a major
28 problem because we're creating a society inside of people that

1 are coming to grips with the fact they're never going to get
2 out, so they might as well make a life for themselves inside.
3 And that's a terrible thing, because they are generating the
4 gang members of tomorrow. And I see them. They're creating new
5 soldiers because they say, "You get caught one more time
6 outside, you're going to be in here. So, let's do it right."

7 So, I ask you to send a message to the Governor
8 today, and that message is this: Yes, we need people who are
9 associated with victims of crime. Yes, we need people who are
10 associated with police, and sheriffs, and district attorneys.
11 But we also need social workers, religious individuals,
12 psychologists and people who have worked with inmates and seen
13 that they can rehabilitate.

14 Because if we don't, I have to tell you, I'm
15 terribly frightened in the months to come because with the court
16 ordered integration of our prisons, there's only one way that
17 certain individuals can hold on to their high posts among the
18 gang members, and that's through violence. And unless we find a
19 way to reward people for doing the right thing, they'll only
20 look to people for the reward for doing the wrong thing.

21 Thank you very much.

22 CHAIRMAN PERATA: Thank you.

23 MS. STRUPP: Good afternoon, Members of the
24 Committee. I really appreciate you giving me the opportunity to
25 engage in democracy today.

26 I work for an organization called -- my name is
27 Heidi Strupp. I work for an organization called Legal Services
28 for Prisoners with Children. I spent the past ten years of my

1 life investigating conditions of confinement in the state
2 women's prisons. The last five of those years have been looking
3 specifically at what is happening with our increasingly aging
4 prisoner population.

5 I wanted to add just a few brief comments of
6 context that I think are really important as you go on with your
7 deliberations today. And I'm not saying anything new, but I
8 think they're incredibly important.

9 And as we all know, we're facing historic budget
10 shortfalls right now. And in the context of these budget
11 shortfalls, California's aging prisoner population is increasing
12 exponentially.

13 What this means is that these prisoners, many of
14 which are lifer prisoners, many of which have served decades,
15 many of which have gone beyond their minimum eligibility release
16 date because the Parole Board fails to parole them, these
17 prisoners, these aging prisoners due to obvious reasons of
18 increased health costs, increased costs on custody to care for
19 them, cost three times the amount of money to incarcerate than
20 their younger counterparts.

21 Couple that with, they have the lowest rate of
22 recidivism. Age is one of the most reliable predictors of
23 recidivism.

24 So what this means is that California taxpayers
25 are being continuously asked to foot the bill to incarcerate
26 those prisoners who cost the most, yet pose the least threat to
27 public safety.

28 And so, from the bottom of my heart, I encourage

1 you, as you consider these candidates today, to only confirm
2 those Commissioners that will release eligible prisoners.

3 Thank you very much.

4 CHAIRMAN PERATA: Thank you.

5 MS. BIBLE: Good afternoon, Members of the
6 Committee. My name is Andrea Bible, and I also work at Legal
7 Services for Prisoners with Children.

8 I have been an advocate for domestic violence
9 victims for the past 14 years, and for the past 10 years, I've
10 worked specifically with domestic violence victims who've been
11 charged with or convicted of crimes.

12 In my capacity at Legal Services for Prisoners
13 with Children, I work with domestic violence victims and who are
14 in state prison, most of whom are serving life sentences for
15 crimes that relate directly to their experiences of abuse.

16 And as I'm sure you're aware, when the
17 Legislature passed Penal Code Section 4801, it directed the
18 Board of Parole Hearings to examine whether a history of
19 intimate partner battering, or what originally was called
20 battered women syndrome, to consider whether it was related to
21 the crime for which a prisoner was convicted. And if so, then
22 to consider that history of abuse as a mitigating factor in
23 favor of suitability for parole.

24 Now, in our experience, even in cases where the
25 Board of Parole Hearings' own Investigations Unit has conducted
26 an investigation into the allegations of abuse, and has either
27 fully or partially substantiated that history of abuse and its
28 relationship to the crime for which the prisoner was convicted,

1 it's not clear that that history of abuse is taken into account
2 to consider as a mitigating factor in favor of suitability
3 because there are very few of the people whose -- whose
4 histories of abuse are fully or partially substantiated who are
5 actually granted parole.

6 So, I would ask that the Rules Committee really
7 consider whether the Commissioners before you are taking into
8 account Penal Code Section 4801 in considering the history of
9 abuse of a prisoner in -- in determining her suitability for
10 parole.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. RIEBE: Good afternoon. My name is Todd
14 Riebe. I'm the elected District Attorney in Amador County. I'm
15 also the co-chair of the California District Attorneys
16 Association's Lifer Committee.

17 And just as a comment at the beginning to avoid
18 repetition, we're making comments, or I'm making comments in
19 support of all four Commissioners: Bryson, Martinez, Doyle, and
20 Eng. We didn't want to do that over and over again and have the
21 same kind of comments, so we're -- we're doing it this way.

22 Recently prosecutors from ten counties had a
23 conference call to discuss whether to extend our support the
24 four Commissioners. Together, these ten counties, including Los
25 Angeles, San Diego, Alameda, Riverside, San Bernardino, Fresno,
26 Santa Clara, and Stanislaus, account for over 80 percent of all
27 the parole consideration hearings in the State of California.
28 Each of these prosecutors attends parole consideration hearings

1 for prisoners committed from their respective counties on a
2 frequent basis, and as such, have had ample opportunity to
3 extensively observe and get to know each Commissioner during the
4 parole proceedings.

5 I can't stress that point enough. These are
6 people that are there on an almost daily basis and get to know
7 each and every single one of the Commissioners, and certainly
8 all four for your consideration today. They're not reading
9 transcripts. They're actually there, looking at the whole
10 proceeding, taking a look at the body language of the inmate,
11 the attitude, the demeanor, the whole thing. And you really
12 have to be there to understand how these hearings go down.

13 I can tell you that in regards to all four
14 Commissioners, they receive the overwhelming support from these
15 veteran prosecutors. And it wasn't because they always go their
16 way, because they don't always go their way. I think each one
17 of them can explain to you decisions have been made by each one
18 of these Commissioners that were contrary to their stated
19 position, but they felt that the -- the hearings were conducted
20 thoroughly, professionally, without bias, and the most that we
21 can ask, fairly.

22 In making decisions whether to release those
23 who've committed murders, kidnappings, and egregious sexual
24 assaults, it is clear that public safety must be the primary
25 concern. It is the collective opinion of these veteran
26 prosecutors that all four Commissioners have carried out their
27 duties in exemplary fashion. They have each demonstrated that
28 they thorough, fair-minded, and unbiased in the performance of

1 their duties.

2 Each Commissioner builds a good record for
3 appeal, which benefits all the parties. Each is respectful to
4 all who appear before them. They may be firm, but they are
5 civil.

6 They each do what is moral and right, rather than
7 seek to curry favor with the prosecutors or the inmate defense
8 attorneys.

9 I need to make a couple observations based upon
10 the comments that have been made today. You know, all
11 Commissioners make mistakes. There hasn't been a single
12 Commissioner ever appointed by any governor that hasn't made
13 mistakes. When you have over 900 hearings, as Commissioner
14 Martinez has, when you've had probably over 1,000 hearings, as
15 Commissioner Bryson has, and hundreds of -- of cases that you've
16 presided over in the case of Janice Eng and -- and also, well,
17 Commissioner Doyle is a rookie, but he's still -- you're going
18 to make mistakes. You're going to make mistakes.

19 I think the focus of this -- of the Senate Rules
20 Committee ought to be on the nature of those mistakes. Do they
21 arise to the level of malfeasance? Do they rise to the level of
22 misconduct?

23 And I think it's very interesting when you take a
24 look at these mistakes that have been pointed out in abundance
25 today that not a single appellate case was cited as a result of
26 these errors coming back, not one. They're differences of
27 opinion.

28 And this body knows, and I can certainly tell you

1 I know, I make a lot of decisions on a daily basis, as you all
2 do. And when you make decisions, you're going to make people
3 angry. It's the nature of the job. Sometimes I don't make
4 anybody happy by the decisions I make, but I try to do it
5 fairly. I try to do it justly, taking a look at all the
6 evidence, and even though I know people won't agree, I would
7 hope that at the end of the day, I can look at myself in the
8 mirror and know that I've done the right thing.

9 I think four Commissioners have passed this
10 test.

11 Second, you know, we've got -- we heard a lot
12 about how they're not releasing, granting enough releases. If
13 you take a look at this thing historically over the last 20
14 years, it's about a 97 percent decline rate, and that is through
15 governors from both side of the political spectrum. So, it is a
16 -- it's fairly constant.

17 And I think that it's really irrelevant and
18 unfair to be pointing out to these Commissioners, who have
19 different assignments at different institutions across the State
20 of California, well, you know, your release rate is pathetic, or
21 your release rate's too high. I really don't think that it
22 ought to be the -- the main consideration of this body.

23 Then lastly, three of the four Commissioners
24 before you today have been confirmed by this body before. I
25 would just ask you what has changed? And I would submit to you
26 nothing, except that they're better at their job. They've had
27 more -- more cases under their belt, more experience, and are
28 better at what they do.

1 I also want to let this body know that I have the
2 letters from several district attorneys in the State of
3 California. I hope that you've received them all, in addition
4 to the letter that I've sent: Delores Carr, the elected
5 District Attorney in Santa Clara; Steve Cooley, the District
6 Attorney in L.A.; Rod Pacheco, the Riverside District Attorney;
7 Bonnie Dumanis, the San Diego District Attorney; Elizabeth Egan,
8 the Fresno District Attorney; Will Richmond, the Alpine District
9 Attorney.

10 In addition to the Cal Chiefs, the State
11 Sheriffs' Association and the California Police Officers'
12 Association have all sent letters to this body urging that all
13 four Commissioners be confirmed.

14 I would submit to you that the most that we can
15 expect from our Commissioners, and the least that we can demand,
16 is that they carry out their duties in a fair, professional, and
17 exemplary manner. All four Commissioners possess these
18 qualities, and they all four deserve your support.

19 And I strongly urge your affirmative vote to
20 confirm all four Commissioners: Commissioner Eng, Commissioner
21 Martinez, Commissioner Bryson, and Commissioner Doyle.

22 Thank you.

23 CHAIRMAN PERATA: I'd like to ask you a
24 question. It goes back to the rabbi's testimony.

25 You know, the question is, how do you justify,
26 just in an overall sense of reality, someone who is infirm that
27 comes before a Parole Board, you all come in, and I'm assuming
28 you're trying to tip the scale in the other direction.

1 How do we justify that? I mean, some of these
2 people I know that were described, I have seen. They're lucky
3 to make it through the door.

4 So, unless it's just abject revenge, that the
5 commitment offense was so egregious that, 35 or 40 years later,
6 "We're still going to keep your ass here."

7 I don't get it, because it costs me money that I
8 don't think we ought to be spending.

9 MR. RIEBE: I can appreciate your concerns.

10 From a district attorney's perspective, sometimes
11 we don't oppose those releases. We will send a letter, or we
12 take no opinion.

13 CHAIRMAN PERATA: Okay, but you should have an
14 opinion because I'm asking you. You're a law enforcement
15 official. The older you get, the more you wonder.

16 But I don't know you at all, but you're well
17 spoken, so just engage me. If somebody is infirm and incapable,
18 has to have somebody changing their diapers, why would we not --
19 why would a board not get a person like that out?

20 MR. RIEBE: Again, you and I -- I don't know if
21 you've read that transcript. I certainly haven't, and I'm not
22 aware of that particular case.

23 So, setting all that aside, you would want to
24 know the -- the factors in the initial case, the life offense.
25 You would want to know their conduct while they were
26 incarcerated. You would want to know whether they've ever
27 demonstrated remorse.

28 Assuming all those other factors that we all look

1 at, and the psychological reports, and all of those factors are
2 all pointing towards a person who has been, you know, doing
3 pretty well since they've been incarcerated, and they have
4 this -- this ailment, maybe that would be a decision that I
5 personally would make to release.

6 But I can't make a blanket statement without
7 knowing all the facts.

8 CHAIRMAN PERATA: But you have said that, you
9 know, maybe 97 percent is not wrong. That's a blanket
10 statement. Somebody pops two out of almost six hundred cases,
11 that is a blanket indictment as far as I'm concerned.

12 So, there's something wrong with this system.

13 Now, you know, we're fungible. Ask staff. We're
14 going to come; we're going to go.

15 You've dedicated your life to that. You've got
16 yourself elected in that kind of a position. It is one of the
17 most political positions there is, but it's also one of the most
18 powerful positions there is.

19 MR. RIEBE: I would agree.

20 CHAIRMAN PERATA: People think we got power.
21 Forget about it.

22 By the way, one of your colleagues has the name
23 of the office up here and a little tiny name down there of who
24 she is. I was very impressed. That wasn't Pacheco, by the way.

25 [Laughter.]

26 CHAIRMAN PERATA: But I would just encourage you.
27 You know, we've got to engage in this. We can't engage on the
28 first floor. I don't care if it's Arnold Schwarzenegger, Jerry

1 Brown, who in the hell ever, it's got to be because your opinion
2 matters to people, where ours, we're out of our element here.

3 But when I look at this stuff, and it's making
4 less and less sense because, you know, we had somebody coming up
5 here talking about the taxpayers. There ain't no bigger waste
6 of money. We could actually get the federal government to pay
7 for these people.

8 MR. RIEBE: Senator, I know, and the District
9 Attorneys Association knows, that there are changes a coming in
10 the way that we do business with CDCR and the inmate population.
11 We know that. We're part of that process. You're part of that
12 process. Inmate defense attorneys and defense counsels,
13 they're part of that process. You know, we -- we encourage
14 that.

15 You know where we come from, and it is public
16 safety. As long as public safety can be satisfied, I think
17 that, you know, there are going to be points where you'd be
18 surprised how much agreement we can have.

19 CHAIRMAN PERATA: I'm always surprised.

20 MR. RIEBE: A little bit about me.

21 Before I was a district attorney, I spent seven
22 years as a defense counsel. So, I've been both sides of the
23 fence.

24 CHAIRMAN PERATA: That's why your studied opinion
25 is important to us, just for that reason.

26 So, I would just encourage you. You've got a
27 good perch right now.

28 I'm going to be leaving, but other people will be

1 here. This is a big issue for all of us, so I just commend that
2 to your consideration.

3 I thank you for being here today.

4 MR. RIEBE: Thank you, Senator.

5 CHAIRMAN PERATA: I'm finished being nice. What
6 do you want?

7 [Laughter.]

8 MR. HUGHES: Good afternoon. My name is Chuck
9 Hughes. I'm an assistant district attorney in Riverside County.

10 I should begin my remarks by saying that former
11 Assemblyman Rod Pacheco, the elected District Attorney of
12 Riverside County, actually asked me to say "hi" to you and
13 extend his best wishes when I began my statements.

14 [Laughter.]

15 CHAIRMAN PERATA: He sent four letters, too.

16 MR. HUGHES: Yes, he did.

17 I should say that the Riverside County District
18 Attorney's Office strongly supports the confirmation all four of
19 these Commissioners. They have demonstrated their commitment to
20 providing fair and well-balanced hearings.

21 I'll let you folks know, I've been a prosecutor
22 for 14 years. I've handled everything from misdemeanors to
23 death penalty cases. I've responded to homicide scenes. I've
24 worked closely with crime victims and victims' next of kin.
25 I've handled lifer hearings. I've appeared before the boards.

26 These folks know what they're doing. They're
27 doing it fairly, and they're doing it appropriately.

28 District Attorney Riebe is correct. Everyone is

1 going to make a mistake at some point. What we've heard is a
2 handful of examples over the course of literally hundreds and
3 hundreds of hearings.

4 It is frequently brought up by opposition
5 speakers that folks that have dedicated their careers to public
6 service in law enforcement are somehow biased. And it's raised
7 -- it raises the specter that they are automatically
8 anti-inmate, that they are automatically opposed to releases.

9 Well, if you look at the records of the folks
10 that we have here, that's not borne out. The folks that are
11 involved in law enforcement that are here have as high or higher
12 parole grant dates as some of the folks who are not involved in
13 law enforcement here.

14 And to suggest that a Commissioner ought not be
15 confirmed simply because they've come from law enforcement is to
16 do the very same thing that these opposition speakers demand --
17 or decry, excuse me, for their clients. That is, to make the
18 decision not based on the merits, but based on some prejudice or
19 some preconceived notion of a person's background.

20 When it is brought up in these hearings that a
21 Commissioner ought not be confirmed because at one time or
22 another they have hurt an inmate's feelings or an attorney's
23 feelings is to put form over substance. The criminal justice
24 system is not for the faint of heart. Even in this room, there
25 are no shrinking violets.

26 We're grown men and women dealing with the most
27 serious issues, dealing life offenses, in many cases murders,
28 people whose -- victims whose lives have been either lost or

1 changed forever.

2 And to suggest that because someone's feelings
3 were hurt, someone was brusque, made a comment that they didn't
4 think was going to be overheard, they ought not be confirmed,
5 defies logic.

6 With respect to the opposition theme that there
7 simply must be more releases, when we hear these examples, they
8 are precisely that: individual examples of, "I disagreed with
9 that decision; I disagreed with that decision; and I disagreed
10 with that decision."

11 I'm certain we could bring in dozens of deputy
12 DAs who would come in on any given day and say, "I disagreed
13 with Commissioners' decisions; I disagreed with judges'
14 decisions." That's the nature of what happens. Both sides want
15 a different outcome.

16 And when one side doesn't get the outcome they
17 want, sometimes those folks feel aggrieved.

18 When we talk about there just must be more
19 releases, and every one of my clients has been suitable, well, I
20 think that belies the advocacy that's involved, as opposed to an
21 objective analysis of that person's clientele.

22 The truth is, each case is unique, each inmate is
23 unique. And the law requires each Commissioner to consider each
24 case on its merits, each inmate based on his or her
25 accomplishments behind bars and before they were incarcerated.

26 The truth is, every grant of parole carries with
27 it a risk to the public. And the law requires Parole
28 Commissioners to balance that risk to the public against the

1 other factors that have been discussed here today.

2 These four Commissioners have demonstrated that
3 that is what they do. They balance the risk to the public
4 against what the inmate did to put him or herself in prison in
5 the first place, and against the various factors that apply once
6 that inmate has been incarcerated.

7 On behalf of the Riverside County District
8 Attorney's Office, I would like to thank you for hearing me out
9 today, and strongly urge you to confirm all four of these
10 Commissioners.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. DAHLE: Thank you, Members of the Committee.
14 I'm David Dahle. I'm the head deputy of the Lifer Hearings
15 Division for the Los Angeles County DA's Office.

16 You've already heard from one of my colleagues.
17 I share her concerns, except for concerns over the Celtics.

18 [Laughter.]

19 MR. DAHLE: I won't claim any connection with
20 that.

21 I was planning on giving you a far more detailed
22 presentation here, but my colleague, who I spoke to before the
23 hearing, stole my comments, as has been typical in the past with
24 District Attorney Riebe.

25 CHAIRMAN PERATA: Yeah, I know you guys. You rip
26 each other off.

27 [Laughter.]

28 MR. DAHLE: I think he very clearly articulated

1 the position of a large number of the DAs throughout California.

2 On behalf of Steve Cooley, I do want to
3 reiterate, though, for Los Angeles County, from both personal
4 experience and from personal inquiry from all of the attorneys
5 that we have that staff the 3,000 life consideration hearings
6 that we've participated in last year, about the qualifications
7 of the four candidates that you have before you here today for
8 confirmation or reconfirmation, and my colleagues' experience is
9 the same as mine, are to strongly support your confirmation of
10 these candidates. That is in the best interest of the public to
11 have them continue to hear cases.

12 I won't repeat the contents of the letter that
13 you received from Mr. Cooley.

14 I will express to you our grave concern about how
15 important it is to have these individuals continue their work on
16 the Board. That, in the grand scheme of things, while we can
17 sit here and debate specific results from specific cases, the
18 issue that really is posed before you is: Do these individuals
19 have the qualifications, and the capability, and the
20 temperament, and the honesty to carry out the duties of
21 Commissioner on this Board?

22 And unequivocally, these four individuals are
23 well-suited for this position. That is our opinion from Los
24 Angeles County.

25 I want to emphasize to you, from our county, the
26 400-pound gorilla in this process, we have 40 percent of the
27 life prisoner population; 12,000 of the prisoners that are
28 lifers in this state belong to our county. A great number of

1 them come from Senators Cedillo's and Padilla's districts.

2 And these are the people that will be returning
3 to our county. So, we are gravely concerned about the
4 appropriateness of their return.

5 But from a personal perspective, let me tell you,
6 I have observed and done hearings with all four of these
7 Commissioners. I have full confidence that they are attempting
8 and are doing the best they can to give a fair and full hearing
9 to each person who comes in.

10 I sit in those hearings, as do my colleagues.
11 It's a long day when we do hearings. We don't sit there for one
12 hearing. We sit there for days at a time with this panel. We
13 know the process. We've watched them go through it. We've
14 watched them agonize over going through the files. And by the
15 end of the week, you're bleary-eyed when you come in Thursday
16 and Friday from spending time going through these files and
17 getting the detailed information.

18 I'd like to address, Senator, your question
19 regarding elder inmates. Let me reiterate what District
20 Attorney Riebe pointed out to you.

21 There is a process in front of the Board in
22 Compassionate Release. That is an available tool for
23 consideration of release of prisoners who are so disabled that
24 they pose no risk to public safety.

25 I will tell you personally, I have been in front
26 of the Board in en banc sessions and urged release for inmates
27 in that circumstance, as have other DAs who have offered a
28 position not opposing release of the prisoner. So, there is a

1 mechanism there.

2 But in the context of the parole hearing itself,
3 these Commissioners are obligated not to just look at the
4 disability, but to look at every single factor that supports
5 suitability and that goes against suitability. And these four
6 individuals you have behind you here today do that. Every time
7 I'm in a hearing room I sit with them, I see that.

8 I thank you very much for your time.

9 CHAIRMAN PERATA: Thank you.

10 MS. KLINGE: Good afternoon.

11 CHAIRMAN PERATA: Hi there.

12 MS. KLINGE: Hello. I'm Jill Klinge. I'm a
13 deputy district attorney with Alameda County. And I'm here for
14 couple of purposes.

15 First of all, our office does support the
16 confirmation of all four Commissioners that are before you
17 today. And we don't appear on every Commissioner, as Senator
18 Perata may have noticed.

19 CHAIRMAN PERATA: We miss you a lot.

20 MS. KLINGE: Thank you.

21 And we don't take this lightly when we make the
22 determination in Alameda County to support Commissioners.

23 I've done the lifer job for over two-and-a-half
24 years. I have appeared with all four Commissioners numerous
25 times, Commissioner Doyle just a couple because he's newer.

26 And when I spoke to my DA, I would wholeheartedly
27 recommend all four.

28 I don't take the tact in the hearing as a zealous

1 prosecutor like I would in a trial court. And for a little bit
2 of background for everybody, because I don't believe any of you
3 have taken us up on our glowing offers to attend hearings with
4 us. I know your staffers may have.

5 But to get an idea of what this is really like
6 out there, this isn't a court of law. This is an informal
7 administrative hearing. This is not governed by rules of
8 evidence. We are -- the DAs are put in a different context, as
9 pointed out by Senator Padilla. We are there. We give closing
10 arguments. We are allowed to question the inmate through the
11 panel.

12 Now, the transcripts may -- don't bear out what
13 really happens in a hearing. Yes, you get the words, but you
14 don't get, as District Attorney Riebe pointed out, the voice
15 inflection, the body language of the attorneys, the inmates, or
16 the DA. Because on any given day, one or all of them can be a
17 little out of line.

18 When we question an inmate, we may start out --
19 we all start out, as I believe -- I look at the panel, and I
20 say, "Would the panel ask the inmate X, Y and Z?"

21 After doing that a couple of times, I continue to
22 look at the panel, but I will just speak in the third person,
23 "Did the inmate do this? How does the inmate explain this?"
24 And then the inmate will answer to the panel.

25 So, that may appear in a transcript like we're
26 directly questioning them, but we're not.

27 The DAs are the ones who go through all the
28 transcripts of past hearings, all the past psychological

1 reports, and point out inconsistencies.

2 There's no legal definition of clarifying
3 questions. There's a new defense mode to object that we have
4 to ask clarifying questions, but no one has ever defined what
5 that means.

6 The defense attorneys that are present today are
7 very zealous, and they're very result oriented. And at times in
8 the hearings, they can become argumentative and somewhat rude at
9 times in their zealous representation of their clients. Now,
10 that may not appear on the transcript.

11 And yes, the Commissioners have to run their
12 hearings appropriately. They have to control it, or as we are
13 today, we could be here till midnight. And they don't do it at
14 the detriment of the inmate.

15 These Commissioners, yes, you may not like their
16 tone of voice sometimes. You know, I may not like the results,
17 certainly not when they parole the guy to live a mile from me
18 that set a woman on fire and beat her, you know, and had a
19 recent 115. But those things happen, and I don't come in here
20 and say, I don't want them to be a Commissioner any more.

21 So, the specific examples, yes, these attorneys
22 do very strenuously believe that their inmates deserve to be
23 released, but there's another side. And there's another side to
24 these hearings that you can't get necessarily from the
25 transcripts.

26 They speak a lot about the law, and the
27 Commissioners not knowing the law. But I don't know how many
28 times I've sat in hearing, and because I speak first as opposed

1 to in court, and the inmate attorney speaks second, I have to
2 listen to them misstate the law. Now, the law is subject to
3 interpretation, but they blatantly misstate it at times.

4 I can't correct them. They've done it three
5 times here, for example, today. Penal Code 5075 does not state
6 that the Commissioners should represent a cross section of the
7 community. It states that they shall have a broad background in
8 criminal justice, and then goes on from there.

9 Referring to juvenile commissioners it is
10 different and states that they should come from a cross section
11 of the community.

12 When they said that the reliance on immutable
13 factors -- the life crime itself alone -- is not following the
14 law, that's untrue. That is currently the law in the State of
15 California. In fact, it was argued in front of the Supreme
16 Court on June 4th, and we're awaiting a decision of whether or
17 not that's going to stay the current state of the law.

18 The right to remain silent at a parole hearing is
19 not a constitutional right, as was stated here today. And
20 they're not misrepresenting it purposefully, I don't think. I'll
21 give them the benefit of the doubt. But those are the things
22 that happen at hearings.

23 These Commissioners are on the judges. They are
24 not lawyers. They are citizens that have applied for this
25 position and been appointed, and have dedicate their lives to
26 it.

27 As Senator Perata pointed out, they're not
28 staying in garden spots. I don't know where he's finding

1 Courtyard Marriotts in Corcoran. And they are on the road
2 Monday through Friday. And when they get home Friday, if
3 they're lucky, their files for the next week got there on time.
4 And then they spend their weekends reading those files and
5 preparing them. And then at night, every night after their
6 hearings, they have to go over the files for the next day to
7 refresh your memory, because you're doing a bunch in the same
8 week.

9 It's a somewhat thankless position. You're
10 attacked politically. You are attacked by inmate attorneys,
11 sometimes by DAs, and you're giving up your own time, and you're
12 traveling all over and staying away from your family. And these
13 four Commissioners have given it their heart and soul.

14 They do respect the process. They do believe
15 that inmates should be released.

16 Law enforcement backgrounds for most people, some
17 it doesn't, gives you the broader perspective. There are two
18 sides to everything. And they look for both sides. They do
19 understand that people come from very horrible backgrounds. And
20 I've heard these Commissioners here today question them on that,
21 and comment that, yeah, you really didn't have a chance from the
22 beginning. They understand that.

23 But they also have to look at the factors of
24 suitability. They have to apply those factors.

25 An example was given that Commissioner Eng
26 doesn't read every -- sentences from every letter of support
27 into the records. They've recently been trained in ways to try
28 to keep the hearings a little bit shorter. They take every

1 letter into consideration in their deliberation.

2 No, they're not going to read every letter into
3 the record. I've sat through that, when they were reading 30
4 letters of support into the record, all saying the inmate's a
5 wonderful guy and it's a great thing. That's great, but we
6 don't have to read every letter into the record. You can attach
7 them to the record, and they're part of the record and they're
8 considered.

9 There's no rule that two DAs can't participate in
10 a hearing. These are informal hearings, and the Commissioner
11 has broad discretion to run that hearing.

12 Commissioner Martinez I've appeared in front of
13 with inmate batterings issues. And he -- we had a hearing that
14 kept getting continued. It was private change of attorney who,
15 in my opinion, didn't quite understand the system, and we were
16 trying to work -- I was trying to work with her on the side to
17 get her to understand what we were doing.

18 And inmate battering report comes in from CDCR,
19 and they're huge. They talk to tons of people. They look at
20 the old files. They come to me and request a file. I pull it
21 from archives. They go through it.

22 And these reports, Commissioner Martinez went
23 through them and through them. And there were inconsistencies
24 and problems with them. He sent it back for another report to
25 clarify the inconsistencies for this inmate. He truly does
26 understand that issue because he deals with the women's
27 institutions.

28 Commissioner Eng, as stated, if you don't deal

1 with the women's institutions, you don't deal with that issue.
2 By knowing her and how prepared she is, if she got sent to a
3 women's institution, I would bet she'd be over there getting
4 trained on it very quickly.

5 And their knowledge of their responsibilities,
6 they're trained. They can only observe what they're trained,
7 and then they can do. I know these Commissioners have asked
8 questions and tried to find out answers. But they're not
9 judges, and they're not lawyers.

10 Perhaps a fix of the system down the road would
11 be to make it a quasi-judicial position, because you're
12 expecting them to do that type of work.

13 Even judges are appealed and reversed. But if
14 you take a smattering of examples from a smattering of defense
15 counsel, and use that to run out somebody from their job, where
16 they've put their heart and soul into it and done a good job,
17 then that's shameful.

18 I really hope that you confirm all four. We need
19 all four Commissioners. We're trying to meet the backlog. When
20 Commissioners are not confirmed, the backlog grows worse, and
21 that's not the right direction to move either for the inmates.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. RICO: Good afternoon. My name is Ron Rico,
25 and I'm with the Santa Clara County District Attorney's Office.

26 Our elected District Attorney, Delores Carr, sent
27 a letter in support of each of the four Commissioners. I'm here
28 at her behest.

1 Most of what I was going to say has already been
2 said, but I feel that I needed to get up to say a couple of
3 things. Lawyers are like that.

4 CHAIRMAN PERATA: So are Members of this
5 Committee. We say things many times over and over.

6 MR. RICO: Earlier this morning, I had a hearing
7 at New Folsom, otherwise referred to as California State Prison
8 Sacramento. You know, up the street about 30 minutes from here.

9 With all due respect, I sit here, and this is
10 such a beautiful room. But I felt more comfortable at New
11 Folsom because I was doing a hearing there.

12 And it's -- but what I needed to say, I've heard
13 things said today, and I've heard different phrases used. I've
14 heard, I guess, the issue of numbers raised, the percentages of
15 the releases.

16 I've been a deputy district attorney, I've been
17 with this office for 29 years. And every -- and I've been doing
18 these lifer hearings since 2003.

19 CHAIRMAN PERATA: Are you aware of 3 at 50? You
20 don't have to be here anymore.

21 [Laughter.]

22 MR. RICO: Well, I was beginning to think that
23 when it started getting warm back there, that it's time to end,
24 and they turned the air conditioning off.

25 [Laughter.]

26 MR. RICO: But the issue -- the issue is this, I
27 guess. When I go into these hearings, I do my best to keep an
28 open mind and to listen to everything before I make a final call

1 as to what I believe is the right thing. And I think that's the
2 only way to approach it.

3 You talk to victims. You talk to people who have
4 been horribly injured, you know, who have lost family members,
5 who have grown up without parents. You talk to victims. I know
6 many whose father has killed their mother, so they are the child
7 of the murderer, and they are the child of the victim.

8 There are so many complexities in these hearings,
9 where do your allegiances lie? What is done?

10 And there are so many other issues. For example,
11 Senator Perata, I know that having read the newspaper articles,
12 you were a victim of a car jacking. That was in the paper.

13 And if, in a hypothetical sense, if -- you've
14 looked down the barrel of a gun. If the person that stole your
15 car had fired that gun and killed you, ask yourself, would your
16 family members -- how much time do they think would have been
17 appropriate for that person to serve for what they did? That's
18 one number. Do you pick a number of years?

19 I routinely indicate that in a particular case,
20 whether it be a first degree murder, whether it be a second
21 degree murder, you can't put a specific number of years. I know
22 there are matrixes that talk about, you know, how many years for
23 what, and you try to categorize everything.

24 But if it gets down to the issue as to what's
25 right, it is necessary to consider the life crime, the impact on
26 the victims, but also the inmate. What has the inmate done?
27 What was the inmate's prior record? What has inmate done since
28 the inmate has been in?

1 And again, take into account how do you know what
2 to believe? And being in Sacramento, do you believe everything
3 you're told by people you come into contact with?

4 I won't expect an answer.

5 CHAIRMAN PERATA: It's a rhetorical question.

6 [Laughter.]

7 MR. RICO: There you go.

8 But the thing is, you have an inmate that comes
9 in, and you hear time and again, how are you different? What
10 makes you a different person today than you were at the time you
11 killed someone?

12 Well, there's this, and this, and this.

13 And quite often, DAs who do these hearings hear
14 the same thing, you know. "Well, I was a stupid kid back then,
15 but now I've learned. I understand. I have insight into it."

16 Some of them, perhaps, are telling the truth.
17 Others are saying what they've heard you need to say to get out.

18 And Commissioners like the four that are sitting
19 here are in position of having to determine, do we believe
20 this? What do we go by? We go by the psych assessments.

21 Psych assessments, I don't know if any of you
22 have read them. There are good ones; there are bad ones.

23 CHAIRMAN PERATA: Some of us have been subject to
24 them.

25 [Laughter.]

26 MR. RICO: And they're all over the board.

27 So, I guess what I'm saying is that the word that
28 jumps out, and the reason I got up to speak, it has to do with

1 the concept of prejudging, whether you're talking about a
2 preconceived notion of a person's background. That phrase was
3 used a little while ago, and perhaps it was used in the
4 connection, you know, the preconceived notion of a person's
5 background meaning the inmate.

6 But what about the preconceived notion of the
7 person's background meaning the Commissioners? You've got three
8 of them who have law enforcement background and one who doesn't,
9 you know.

10 What you really need are individuals who are
11 dedicated to trying their best to do the right thing. They're
12 not always going to get it right. I could turn around and look
13 at each of these Commissioners, and indicate that I have done
14 hearings in front of all of them, some I have agreed with their
15 decisions, some I have not agreed with their decisions.

16 But what I am in agreement with is that I cannot
17 cite a particular hearing that I have participated in with any
18 of these four where I have walked out of that room, regardless
19 of whether I was satisfied with the outcome or not, but I have
20 been convinced that they have done their best with the
21 information available, the resources available, to do the right
22 thing.

23 What I am asking this board to do is, to do the
24 right thing. And I believe on behalf of our office that the
25 right thing is to confirm each of these four: Sandra Bryson,
26 Robert Doyle, Janice Eng, and Ed Martinez.

27 And I thank you for your time.

28 CHAIRMAN PERATA: Thank you, sir.

1 MR. NORTON: Good afternoon, Senator Perata. My
2 name's Mark Norton. I'm an attorney.

3 I would have been here earlier to make some
4 specific comments, but I, unlike Mr. Rico, was out at New Folsom
5 and I didn't get to take off like he did.

6 CHAIRMAN PERATA: He's got the senior status.

7 MR. NORTON: Well, I had a client; he didn't.

8 But anyway, you know, some of the things that
9 were said by the government's representatives I just have to
10 respond to.

11 If the Board of Parole Hearings ruled in my favor
12 97 percent of the time, you know, I would probably not agree
13 with them all the time either. What? That doesn't even make
14 sense. They -- I think that's a disingenuous comment, is
15 basically what I want to say.

16 And there were some other comments made, frankly,
17 that I took very personally by some of the government's
18 representatives. And I'm not here to necessarily harp on that.

19 But I want to say this. There seems to be this
20 term "lifer." We all use it. It's a nice, short, little
21 phrase, life inmates.

22 These inmates aren't serving life terms. They're
23 serving term to life. Penal Code 3041 mandates that parole
24 shall be granted. It should not be the exception. It should
25 be the rule.

26 Now, I've appeared before three of the four
27 individuals behind me. I like them on a personal level, each
28 and every one of them.

1 I've gotten grants from Commissioner Bryson and
2 Commissioner Martinez.

3 I've also had some decisions, particularly by
4 Ms. Bryson this past December, that has really left me in a
5 quandary, you know. It's with reticence I come here, wondering
6 if my future clients are going be -- you know, feel retribution.

7 But this particular case, and again, I didn't
8 even decide until just now to talk about it, Depriest Williams.
9 Been serving 21 years on a second degree murder. In 2006,
10 Commissioner Bryson found him suitable for parole, along with
11 Commissioner Gretchen Garner-Easter.

12 The Governor reversed the grant. He was put back
13 on calendar December of this last year, 2007.

14 Commissioner Bryson denied him two years, and the
15 only difference that I can tell was that the Governor had
16 reversed the date, and there was a different deputy
17 commissioner, Dennis Smith, who is a very tough deputy
18 commissioner.

19 Again, I haven't appeared before Commissioner
20 Bryson since that date, and I never talked to her about it
21 personally, but I want the panel to consider that. I consider
22 that to be a very arbitrary and capricious decision on her part,
23 and for that very reason I can't support her -- her
24 nomination.

25 Commissioner Martinez, I think for me, I've
26 appeared before him not as much as some of the other
27 Commissioners. I would not oppose his -- his confirmation.

28 He just recently continued a hearing wherein we

1 went through about two-and-a-half hours of the hearing, and he
2 wanted more. He wanted basically the preliminary transcripts
3 because -- to determine whether or not my client, his version of
4 the story was -- was accurate. Very interesting case, but I
5 respected that. He could very easily denied my client a year,
6 two years, three years. But he didn't. So, I think he really
7 afforded my client due process.

8 And I know I'm going to probably piss off some of
9 my fellow members of the Defense Bar with that comment, but I
10 can only go by what I know.

11 So, with Commissioner Eng, my experience with her
12 is so limited, I wouldn't have an educated opinion.

13 But again, I just feel that, you know, there are
14 laws that govern these hearings. And I would agree with my
15 esteemed colleague, Ms. Klingee, that may this should be a
16 quasi-judicial position because you do have to know the law.
17 You have to apply the law.

18 And it's very clear in Title 15 that district
19 attorneys shall not give legal advice. And they do it all the
20 time. Then, when the attorney, the defense attorney jumps up
21 and says, "Hey, you can't do that," you know, then we -- it's
22 really a fine line to toe.

23 So, having said that, again, these -- these
24 inmates are being denied at the rate of the 97 percent. That
25 should not be so.

26 Now, the clients I represented today out at New
27 Folsom, each one of those I wouldn't have argued for a date,
28 contrary to some of the government's representatives. I don't

1 go up there and think every one of my clients is suitable for
2 parole. On the contrary, sometimes I agree, he's not ready for
3 parole.

4 And I'm thankful there are institutions that keep
5 some of these individuals locked up. I said that before, I say
6 that again. I have children, loved ones. I wouldn't want these
7 guys on the street.

8 But to say that 97 percent of them are unsuitable
9 for parole, something's wrong with this system. These life --
10 term to life inmates have become political prisoners. These
11 people behind me are appointed by a political -- politically
12 elected official, Arnold Schwarzenegger. Everybody here is
13 elected politically. The government, the district attorney's
14 office, political position.

15 Ironically, the only ones that aren't political
16 in this are the defense attorneys. And I don't think it's a
17 smattering or anecdotal, you know, decisions that are being
18 pointed out; 97 percent of the time they're being found
19 unsuitable for parole.

20 It's supposed to be an objective process, but
21 when you come from a law enforcement background, you view things
22 through a different lens. It's just as simple as that.

23 My dad was a Michigan State Trooper for 12 years.
24 I grew up as a straight and narrow, law and order conservative.
25 Thank God I saw the light. I'm kidding.

26 [Laughter.]

27 MR. NORTON: But it's very interesting. I just
28 think that the cross section does need to be there. Again, I

1 don't have anything personally against any of these people. I
2 think they're fine people. I think they do maybe what they
3 think is right in their minds.

4 So with that, I will submit my comments.

5 And oh, one other thing with Commissioner
6 Martinez. Two or about three weeks ago, at Mule Creek State
7 Prison, my client had murdered an 18-month-old child. The
8 district attorney from Sacramento County started his closing
9 argument with, "Mr. So-and-so's a whimp."

10 And I said, "Wait a minute. You're not going to
11 call my client names."

12 And to Commissioner Martinez's credit, he stopped
13 the district attorney and asked him to refrain from using ad
14 hominem attacks. So, I wanted to put that on the record for
15 Commissioner Martinez.

16 Thank you.

17 CHAIRMAN PERATA: Is there anyone else? I'm not
18 going to rush you.

19 Let me just say that this is going on for awhile,
20 and there's one particular reason for it. It was said at the
21 outset. There ain't no other arena or theater for this
22 discussion. I think there's a lot riding on what we do with
23 these individual lives.

24 So pro or con, up or down, I just am grateful for
25 those of you that are speaking and those of you that are here
26 and listening.

27 Yes, sir.

28 MR. WATTLEY: Good afternoon. My name is Keith

1 Wattley. I'm an attorney at a law firm called unCommon Law.

2 I'm not going to be terribly eloquent,
3 unfortunately, but I've got a lot on my mind, having heard what
4 I've heard today and having seen what I've seen.

5 I came to my first set of confirmation hearings
6 about seven or eight years ago in this room. And I remember
7 asking the question of the Committee at the time that they --
8 that they charge these Commissioners with actually making a
9 change.

10 I mean, the fact that 30 years have gone by, and
11 we've had very low rates of parole doesn't make it okay. It
12 says that there's time for a change.

13 And I was -- I was assured back then that things
14 would change.

15 And I do want to just take a second to thank you,
16 Senator Perata, for -- for opening up the conversation. We're
17 talking about things around this process we didn't even talk
18 about that long ago. We're having -- people are defending
19 positions that we didn't even acknowledge existed back then.

20 Unfortunately, we're just getting started. And I
21 hope that whoever succeeds you on this Committee will pick up
22 this cause and continue along this direction, because this is a
23 badly, badly broken system. Badly. And it's not getting better
24 any time soon.

25 People have talked about the -- the hearing
26 backlog, and you should confirm these Commissioners because the
27 backlog's only going to hurt prisoners.

28 Well, the backlog, which I study on a daily

1 basis, doesn't exist because you don't confirm Commissioners.
2 It exists because these Commissioners break the law every single
3 day. Every Commissioner. And as long as they do, you won't be
4 able to add enough Commissioners to keep up with the number of
5 hearings that are coming up. It just won't happen.

6 And as I've said before, this is the only
7 Committee, and as you just pointed out, this is the only
8 opportunity many of us have to weigh in on whether these people
9 stay in these positions or not. And this is the only Committee
10 in that can challenge the Governor and the Board, more directly,
11 because as I've -- again, as I've said before, it doesn't really
12 matter that much what people's background is if they're all
13 violating the law, and they are.

14 If my best friend were on the Board, and he did
15 what these Commissioners do, I would oppose him.

16 And this is the only Committee that can make a
17 change. I recall not that long ago that you requested, however
18 informally or formally, that the Inspector General investigate
19 some aspects of the Board. Now, I never heard of the outcome of
20 that -- that investigation, but I think it -- it should be an
21 ongoing and very deep investigation into the day-to-day
22 operations of how this Board is operating.

23 And as I said, things are getting worse. This --
24 right now, the Board is reporting a backlog of overdue hearings
25 of about 1500. That's about 500 higher than it was this time
26 last year.

27 Commissioner Bryson said that the postponement
28 rate is getting better. That's not true. This year, January

1 through May, 50 percent of all the scheduled hearings don't go
2 forward; 50 percent don't go forward. They add about 50 or 55
3 cases to the backlog every month.

4 We're going in the wrong direction. This is the
5 Committee that can turn it around, I think. And I hope that you
6 and whoever succeeds you will take that up and actually make
7 that -- make that difference.

8 And again, it's not about whether we like these
9 people. It's about what they do when they get here. And these
10 people aren't following the law. That should be a pretty short
11 inquiry. This hearing should have taken about five minutes, in
12 my view.

13 That's all I have. I appreciate your time.
14 Thank you.

15 CHAIRMAN PERATA: Thank you.

16 Yes, sir.

17 [FROM THE AUDIENCE:] I think Keith's overall
18 comments there would be better -- a better note to end on. So,
19 I'll pass.

20 CHAIRMAN PERATA: Thank you, though we're not
21 quite ending.

22 MR. MILLER: Very briefly, thank you in general
23 on this process.

24 As you know, the district attorneys are part of
25 the executive branch, and the Board is a division of the
26 executive branch. The Commissioners are appointed by the
27 Governor, who is head of the executive branch.

28 This today, I understand, is the legislative

1 branch, who makes the laws. And the inquiry doesn't depend on
2 how many district attorneys support somebody or not. I've never
3 heard a district attorney ever oppose a commissioner.

4 And by the way, the District Attorneys
5 Association publishes a manual how to oppose parole. And we'd
6 be glad to make that available to the panel. It's available to
7 the inmates now. It actually teaches the district attorneys how
8 to come up and challenge a favorable psychological report, and
9 to bring forth lurid --

10 CHAIRMAN PERATA: Do they sell this, or do they
11 just give it away?

12 MR. MILLER: It's not supposed to be available,
13 but we have obtained it. And it's very lurid. It tells the
14 district attorneys how to point out and bring photographs, lurid
15 photographs of the crime scene to the parole hearing, anything
16 to convince the Commissioners to deny parole.

17 But in any event, to make this short --

18 CHAIRMAN PERATA: Was this before Pacheco became
19 District Attorney?

20 [Laughter.]

21 MR. MILLER: I have no idea.

22 CHAIRMAN PERATA: Take good notes, now. I want
23 you to report back to Rod. I haven't forgotten him.

24 [Laughter.]

25 MR. MILLER: The 97 percent, it's actually 99
26 percent denial because the Governor for reverses two-thirds.
27 Apparently he doesn't even trust his Commissioners, because he
28 reverses two-thirds of those decisions.

1 So, one person out of 100 hearings, at which
2 about 50 of the inmates are judged forensically not to pose a
3 further risk to public safety, is nothing close to what the law
4 requires. And I think it's a simple question.

5 And by the way, the Compassionate Release System
6 doesn't work. About a third of these prisoners are dead by the
7 time the case finally gets to the Board, and they deny about
8 three-quarters of them according -- over the past year.

9 The bottom line is, if the Commissioners -- and
10 by the way, the district attorneys that talked to you don't know
11 the law either, because Penal Code Section 5075 clearly says
12 that the Governor shall appoint, and the Rules -- and the
13 Committee -- and the Senate shall confirm Commissioners who
14 represent a cross section, not only a cross section of the
15 California community, but it's very specific. It's an ethic,
16 gender, economic, and geographic cross section.

17 So -- and the law does not allow the district
18 attorney at a parole hearing to ask any questions of the inmate,
19 through the panel or directly. Those are the laws.

20 The question is, are these Commissioners
21 following the law? They're not following the law, as
22 Mr. Wattley eloquently put it.

23 And the inquiry by the judicial branch, which is
24 a check and balance against this very thing that's happening,
25 should be very simple.

26 Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. GRAY: Thank you, Senators. Matt Gray on

1 behalf of Victims Foundation, representing a number of victims
2 of violent crime who are not as well organized as some of the
3 vengeance groups, but are nonetheless continually growing.

4 I'm going to make this brief, because you've all
5 been very patient, and your bladders are obviously much stronger
6 than mine.

7 So, if it pleases the Committee, I'd like to just
8 provide some background about Victims Foundation. We represent
9 victims of violent crime. These are victims who have been shot.
10 Who, in their last gasping breaths, have spit up blood as
11 they're trying to get enough air in their chest. Who have
12 watched their loved ones expire. Who've listened to the last
13 gasps of their loved ones as they died. Who have had their --
14 their children raped with shotguns. Who have just been
15 brutalized in truly, truly horrific crimes.

16 And these victims of violent crimes do not
17 respect the process, and do not respect how these inmates are
18 being treated supposedly in their name.

19 It does not do these victims of violent crime any
20 justice. It does not honor their personal trauma to continue to
21 violate the rights of other people in their name. They feel
22 like they're being used, and their personal trauma is just
23 essentially a matter of convenience.

24 I listened to the district attorneys come up, and
25 they are so well-spoken. It doesn't surprise me that they get
26 such wonderful conviction rates even of the factually innocent.
27 They are very eloquent speakers.

28 But they want you to rely upon the personal

1 experiences and the subjectivity, the subjective observations of
2 these Board members. Reading body language and such.

3 Well, you know, body language interpretation
4 varies from culture to culture. And someone might smile in one
5 response, and it might be humorous, or they might be
6 embarrassed, or they might be ashamed.

7 I don't know that the Board of Parole Hearings
8 offers any sort of training, or that there's any type of
9 scientific validation to reading body language. It is entirely
10 subjective.

11 And I was in law enforcement. And I don't know
12 any cops who like inmates. In fact, the only people they
13 dislike more than inmates are the defense attorneys. And the
14 correct term within law enforcement is, "scum bags and their
15 clients."

16 So, law enforcement might not be the best pool of
17 people to pull from to determine rehabilitation, to determine
18 future likelihood of reoffending, or any of that, because
19 they're very good at what they do in the beginning. They know
20 to recognize a law that's been broken. They know to lock
21 someone up and, hopefully, keep them safe while they're locked
22 up. But I don't know that they're at all qualified to determine
23 future likelihood of dangerousness.

24 And I think that since this is such a touchy
25 subject, that there's so many laws involved, we should probably
26 have administrative law judges, or retired judges of diverse
27 backgrounds sitting on these boards. And we should not simply
28 be pulling from one group of people.

1 I don't think that law enforcement represent a
2 diverse -- is a diverse representation of California's
3 demographics. It might be where we're headed someday, but it's
4 not where we are right now.

5 And with that, we would like to respectfully ask
6 that you deny the Commissioners not on a personal level, because
7 they're probably very likable people, but unfortunately they
8 were thrown into a mix that's not necessarily their fault.

9 But until the state is going to start upholding
10 its agreements with these inmates that they can have a
11 possibility of parole and shall normally have an opportunity to
12 be paroled, until the court's agreements with these inmates is
13 going to be honored, until the district attorneys -- when was
14 the last time a district attorney came in here and opposed a
15 Commissioner? I've been here 15 years. I don't think it's ever
16 happened, and I have a pretty good memory. It's not perfect.

17 So, okay, the district attorneys are here again
18 in support, fine.

19 But until this state upholds its end of the
20 agreement with these people, until the Governor's Office starts
21 appointing people who are going to uphold the state's agreement
22 with these people, I am just thankful that we have a Rules
23 Committee that is willing to inject some integrity into the
24 process.

25 We ask for them to unanimously be rejected.
26 Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. HANDLEMAN: I'm Scott Handleman, again,

1 attorney for many lifers. And I'll be very brief in summing up
2 here.

3 I just wanted to make a quick general comment,
4 couple of comments.

5 You know, this ultimately is about following the
6 law. And the District Attorney from Santa Clara, Mr. Rico,
7 asked earlier how much time would be appropriate.

8 Well, the question of how much time is
9 appropriate is -- is determined by the sentencing matrix that
10 already exists.

11 The purpose of the lifer parole hearings is to
12 decide whether somebody is an unreasonable risk of danger to
13 society. It's a hearing on whether someone is dangerous.

14 And the obligation of the Parole Board is to
15 follow that.

16 Our law, Penal Code Section 3041, which was
17 passed by you, the Senate, the State Legislature, recognized the
18 possibility of rehabilitation, and that people can change. The
19 possibility of transformation. That was the recognition in
20 creating the possibility of parole.

21 And the law does state, parole shall normally be
22 granted. When you have 97 percent of people being denied, that
23 law is not being followed.

24 And so, for that reason, I think it's -- it's
25 important that there be change in the -- in the composition of
26 the Parole Commission.

27 Thank you.

28 CHAIRMAN PERATA: Thank you.

1 Anyone further? I'm not encouraging it.

2 MR. TREESMAN: Senator, if I may stand? I've
3 been sitting for a long time.

4 CHAIRMAN PERATA: Sure, go ahead.

5 MR. TREESMAN: Thank you.

6 My name is Douglas Treesman. I'm from Fresno
7 County, and I'm here on behalf of Elizabeth Egan, our elected
8 DA.

9 I wasn't intending to speak, but I've heard an
10 awful lot today, and I would like to respond to a couple of the
11 comments that were made, with great respect.

12 I've worked with all of these Commissioners. I
13 have great regard for them. They make a heartfelt effort at
14 determining whether an individual is suitable or not.

15 Many statements of the law have been made here
16 today. I understand that there can be disagreements.

17 The Supreme Court of our state has set out that a
18 life inmate is a life inmate, and that is the presumption.

19 Until that law changes, these are individuals
20 that we are looking at, and we look at suitability in the
21 context of whether or not they pose a risk to the community.
22 This is all a very difficult task.

23 And I would suggest -- and I would sit on such a
24 panel if it comes to pass -- that the law, if you really want
25 earlier release, or if you want a different context of release,
26 then the law should be changed.

27 But these Commissioners are working within the
28 law as it is exists today. And they are doing a yeoman's

1 effort. They are doing their job properly.

2 The kind of assertions that I heard in regard to
3 demeanor, or in regard to their following the law, are really
4 terrible misstatements. I have been present in hearings with
5 each of these Commissioners, and none of them are
6 unprofessional. None of them are uncivil. Each of them makes
7 an effort to apply the fact finding as it should be
8 accomplished.

9 What may be present is a disagreement as far as
10 the interpretation of the law, and I've seen that in fairly
11 stark contrast here today. There's a bit of a debate whether a
12 life inmate should be released as soon as possible, or whether,
13 as is the law, we should be looking as to whether or not they
14 pose a risk to the community.

15 All of that said, first of all, the District
16 Attorney's Office in Fresno does support each of these
17 candidates, and supports them because, as a Constitutional
18 officer I've observed them. And if I saw violations of due
19 process, I would be the first to report that.

20 Secondly, and perhaps even more importantly, none
21 of them have had writs that are taken up and have examples where
22 the courts have agreed with the interpretations that have been
23 put forward to you today. That has been mentioned.

24 And I guess finally, the balance that is being
25 asked of these Commissioners, that is, the balance between
26 public safety and egregious crimes that are, by all accounts,
27 unforgivable crimes, whether or not a person has adequately
28 rehabilitated such that they do not pose a risk to the

1 community, I will tell you anecdotally that any one, any one of
2 these life crimes, if I described them to an individual, they
3 would say, "That's a life crime. Don't let them out. Don't
4 ever let them in my neighborhood."

5 And I would submit to you that if you then
6 discussed, absent the discussion of the crime, all of the
7 efforts that an inmate has made, there might be varying
8 responses as to whether or not that person has done enough to
9 rehabilitate. If you put them together, you get, "Well gee, I
10 don't know." That is almost universal, and I speak to many
11 people about these crimes, because I want to understand what the
12 community feels about these life prisoners.

13 All that said, my own test when I attend these
14 hearings is, would I be willing to have such an individual as my
15 neighbor? They're going to be somebody's neighbor. And so, I
16 put myself in their shoes.

17 And I have found myself believing that many are
18 on the road to rehabilitation. Many, in my opinion, are
19 unlikely to ever rehabilitate. And I don't believe that I have
20 attended a single hearing where I have -- well, I'll take that
21 back.

22 In several of the instances with these particular
23 Commissioners, there have been instances where I have
24 disagreed. Commissioner Eng in particular has granted a date
25 when I have disagreed, but I have never felt that they were
26 departing from the law in any respect. There are general
27 disagreements from time to time about the conclusion.

28 So all of that said, I would welcome, and I would

1 state unequivocally that CDAA and myself would be involved in an
2 effort to change the law and make it more workable so that there
3 was a more objective approach to parole.

4 But remember, please, all of you, that when you
5 are discussing these crimes, these are heinous, horrific crimes
6 that are not forgotten by the victims, and they are not
7 forgotten by the district attorneys that attend these hearings.
8 And when is enough time is somewhat subjective. It is very
9 difficult to say.

10 But we do go by the answers that we receive from
11 inmates, and we do go by the information that we can glean from
12 these hearings.

13 And I believe that, by and large, as best as I
14 can tell, these Commissioners get the call right on virtually
15 every occasion, whether I agree with it or not. They are within
16 the bounds of the law.

17 And so, those are our comments, and those are our
18 comments in support.

19 Thank you very much for your time.

20 CHAIRMAN PERATA: Thank you.

21 MS. LETARTE: If I could just make a brief
22 comment. I couldn't just sit there.

23 CHAIRMAN PERATA: A lot of people just can't sit
24 there.

25 [Laughter.]

26 MS. LETARTE: My name's Diane Letarte. And I
27 might not speak as well as everybody, but my name's Diane
28 Letarte.

1 I'm a state appointed attorney, and I do a lot of
2 criminal defense on these. I also do private ones.

3 And there's two comments that I've got to put on
4 record in regard to, these are hearings that people are supposed
5 to go to so that they can see, one-on-one, the inmate.

6 And district attorneys that are there are
7 supposed to be looking at what's going on.

8 I have been told more than once by district
9 attorneys that, "Oh, my office won't let me do this."

10 Then why the heck are you here at the hearing if
11 you can't judge by yourself what you see first-hand? I mean,
12 there's something wrong here. Just, you know, send in a paper.
13 You don't need to be here to listen to these.

14 The other comment was in relation to, "Geez, we
15 don't have any appeals on what these Commissioners have done."
16 I'll tell you why.

17 I'm a state-appointed attorney. I get paid eight
18 hours to do these hearings, not one hour more. And I cannot
19 appeal these or I would, but I can't because I can't afford to.
20 And so, a lot of these are not on record.

21 And these Commissioners know that, because I've
22 asked a Commissioner in one particular case that, "Look, you've
23 overlooked something. Can we do a reconsideration hearing?"

24 And the Commissioner's comment was, "Take it on
25 appeal," because they know these inmates can't.

26 So, that's all I had to say.

27 I would oppose Commissioner Eng, Commissioner
28 Martinez, and Commissioner Bryson.

1 Thank you. Thank you all.

2 CHAIRMAN PERATA: Thank you.

3 Now everything's been said. Not everybody said
4 it, as the saying goes.

5 Well, let me again thank all of you for
6 participating, for your forbearance.

7 There's been a lot said and a lot to consider.

8 I want to just suggest one thing by way of
9 clarifying something I obviously said a while ago.

10 I wasn't saying that there is something
11 fundamentally wrong with being in law enforcement. What I am
12 saying is, I don't think that you can have a broad-based
13 screening panel unless you have the different disciplines that
14 are necessary to make a holistic evaluation, if you will. So,
15 you know, you have a priest or a rabbi, you have somebody who
16 has a sociology background.

17 I mean, just the idea that, you know, you were
18 born and reared, and then you choose a profession. And then you
19 basically have a point of view.

20 And I wouldn't blame anybody who is on the front
21 line for law enforcement feeling that people were evil until
22 proven otherwise.

23 But the fact of the matter is that law
24 enforcement has a point of view. There are other points of view
25 that I think have legitimacy to it, and that's what I think the
26 Penal Code section either should say or does say.

27 And this Governor has chosen to stack, put a lot
28 of law enforcement people there.

1 And look, I'm a political animal. I understand
2 that in a lot of communities, you slap a firefighter, a cop, or
3 a DA on a piece of mail and you send it to people, and it's
4 persuasive. Sheriffs, powerful endorsements, more powerful in
5 some communities than in others. I represent Berkeley.

6 But that's just the way it is. So, that's really
7 the issue for me. You get more people with diverse backgrounds
8 applying for this. It's not whether or not you've ever been
9 sworn, or anything of that regard. It's much more having a
10 broad cross section, not even ethnically so much as, I think,
11 temperamentally, because people have different attitudes forged
12 by different walks of life.

13 I'm going to hold these over for a vote only for
14 a week. I think too much was said here today. If this were a
15 jury trial, you wouldn't want us to go in, and walk out and say
16 we've got a guilty plea or innocent plea.

17 Again, I want to thank all of you for being here,
18 for what you said. This is one of the more engaging hearings
19 that I've been part of in four years. So, thank you.

20 You've got to leave now.

21 [Laughter.]

22 SENATOR BATTIN: Mr. Chairman, if I might.

23 CHAIRMAN PERATA: Excuse me. He's going to say
24 something.

25 SENATOR BATTIN: I appreciate everybody's time in
26 coming here and testifying.

27 It certainly is very clear that there are
28 different points of view in the room, extremely different points

1 of view, which is somewhat refreshing, because I always thought
2 it was just me and Don that always fit in that world.

3 One of the problems that we keep hearing over and
4 over from both the Defense Bar, and I even think the DAs, is the
5 problem of the backlog, and that it's growing. I think one of
6 the people who testified said it's getting worse every month.
7 It's terrible.

8 And I just want to make sure the Committee is
9 fully aware of the consequences of that in the action that we
10 take. If we were to deny all four of the Commissioners today,
11 it would take until the time Governor makes the appointments to
12 replace them, they're going to go through six weeks of
13 training. They deal with about 16 cases a week. So, if all
14 four of them, we'd be adding another 384 cases to that backlog.
15 If we were to defeat two of them, it would be 192 cases.

16 So, you know, there's consequences to all the
17 actions that you make. That is a significant one, and everybody
18 should be really clear as to that's on you if you're opposing
19 them, as much as it is in the reasons that you have on
20 opposition, that you are actually actively increasing the
21 backlog.

22 The second thing I think I wanted to point out to
23 my colleagues on the Committee is that I've been hearing this
24 consistent theme that law enforcement officers are not capable
25 of being nonbiased, or they have a bias when they come in.

26 And I've been over the last few days looking at
27 the statistics. And it's interesting to note -- sorry, Bob --
28 that of the four, that Bob Doyle has the most release, the

1 percentage. And he's probably the single most identified law
2 enforcement officer, having been 32 years in the Sheriff's
3 Department.

4 And one of the smaller release percentages is the
5 person not from law enforcement, Commissioner Eng.

6 We can make these blanket statements, but they
7 don't necessarily bear out in fact. It's a matter that they're
8 all taking what they think is deserving or not deserving in a
9 case by case basis of a parolee or a parole candidate, and they
10 want to, I think, do the best that they can.

11 Then finally, I do believe that diversity would
12 be great if they met as group. But at a parole hearing, you
13 have one Commissioner and one deputy commissioner. So, if you
14 get this mix that you're talking about, you know, a former cop,
15 or a rabbi, or a priest, and a social worker here, what you'll
16 find is that they will have very different releases.

17 And I don't know, but I think what you'll see is
18 a system that is gamed. And I don't mean that pejoratively. I
19 mean it as, defense advocates will do their job. They know, and
20 they know how to advocate for their clients, and they will work
21 as hard as they possibly can to make sure that that's the person
22 that they get in front of.

23 So, it's a very complicated issue. I know that
24 all of us on the panel take it very seriously, and we've been
25 listening to this entire dialogue.

26 But I did want to point out to my colleagues, and
27 very importantly, that the delay -- by the way, they get a week
28 off; right? If I'm correct, you get a week off to prepare for

1 the hearings, so there's another 64 that got added from last
2 week. So, I don't know if they're going to be working next
3 week. If not, that's another 64 added to backlog if they don't.

4 So, there is a price on this, and we all need to
5 be aware of it.

6 I again thank everybody for their time in coming
7 to the hearing today.

8 Thank you, Mr. Chairman.

9 CHAIRMAN PERATA: Bob, I don't want you to worry.
10 He gave you up, but that's good enough for me.

11 [Laughter.]

12 CHAIRMAN PERATA: Thank you all again.

13 [Thereupon this portion of the
14 Senate Rules Committee hearing
15 was terminated at approximately
16 5:02 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

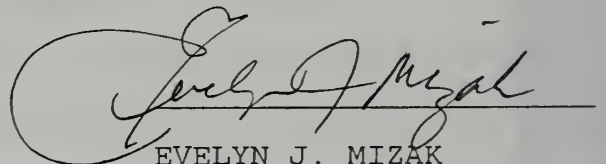
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

23rd day of June, 2008.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Senate Confirmation
Sandra L. Bryson, Commissioner
Board of Parole Hearings
Responses to Senate Rules Committee Questions
June 12, 2008

Statement of Goals

1. *What are your goals and objectives as a member of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? How will you measure your success?*

My goals and objectives are as follows:

- Conduct parole hearings that preserve public safety and protect due process;
- Evolve Board of Parole Hearings (BPH) into a more efficient body with clear, transparent policies and procedures that works effectively with both public agencies and private organizations;
- Achieve the court-ordered case backlog reduction plus shape a plan for handling cases projected over the next ten years;
- Achieve an optimum caseload and assist the Board to develop less time-consuming methods to prepare and conduct hearings;
- Make informed regulatory decisions that will help the California Department of Corrections and Rehabilitation (CDCR) ultimately reduce the incarcerated population.

During my tenure, I hope to make decisions that are legally sound, benefit society, and encourage prisoners to achieve parole suitability.

I measure success in the following ways:

- Inmates receive fair and impartial hearings;
- Decisions upheld by the courts;
- Low recidivism rate for Lifer parolees;
- Positive feedback from the wardens and staff at the institutions as well as from active participants in the hearings and BPH staff.

2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion.*

For the last twenty-five years I have watched with interest the progress of Delancey Street Foundation, which has taken ex-convicts and parolees and taught them to be useful, law abiding citizens. Thousands of people have transformed their lives through Delancey Street, demonstrating the depth and range of unprecedented success this organization has had in a field fraught with failure. They have developed a model that

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works. At the state level for prisoner re-entry and parole, the Delancey CIRCLE developed a program for CDCR entitled Bay Area Services Network, making recommendations to the Department regarding improved delivery of services to the parole population in six San Francisco Bay Area counties. After starting up in San Francisco, Delancey Street is operating successfully in five U.S. cities.

As we tell inmates, proof of suitability lies in positive action. The results of Delancey Street and other organizations has convinced me that some inmates convicted of serious crimes, resulting in indeterminate sentences, can be successfully rehabilitated and returned to society.

Training

3. *Is your training adequate or do you have recommendations for improvement?*

Training recommendations: Continued legal updates (recent court decisions), further training in conducting Documentation, Rescission, Penal Code §3000.1 and Progress Hearings, and training in educational, vocational and self-help programs available in state prisons. Further training regarding the parole revocation process would be useful when reviewing proposed regulatory changes on the topic.

4. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime?*

In my experience, board members do conduct Lifer hearings with a consistent procedural format. Regarding decisions, each commissioner and deputy commissioner reaches the decision on a case-by-case basis, weighing all available, pertinent information. Different commissioners may, because of human diversity, give slightly different weight to each factor of suitability or unsuitability.

The facts of the crime constitute one dimension of the prisoner's life. Other dimensions include his/her prior criminal and social history, behavior and programming while incarcerated, psychological/psychiatric evaluations, parole plans, and the hearing testimony. The nexus between the static factors of the crime and the inmate as he or she presents at a hearing is the evolution of the prisoner's past mental state and attitude toward the crime to his or her present mental state and attitude. Who is this inmate today? The "appropriate emphasis" is the Commissioner's responsibility and *discretion*, based on professional and life experience and knowledge.

This responsibility is the core of the commissioner's duty and requires mature reasoning capability.

- 5. Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.**

Because I have been continuously scheduled to conduct hearings in prisons, I have not had the opportunity to observe any educational, vocational or self-help programs in CDCR. I would like to do so once the workload permits in a way that would maintain the integrity of the program while I am observing it.

To gauge program effectiveness, I ask for input from counselors and officers at the institution, I question the inmates about what the programs have taught them, and what skills or concepts they will apply on the outside.

Psychological Evaluations

The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement.

- 6. What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? What is the BPH policy regarding this issue?**

Per BPH commissioner training May 2008, the Forensic Assessment Division (FAD) of BPH is conducting psychological evaluations at the rate of one every three years. A timely psychological evaluation must be prepared for every initial parole consideration hearing.

- 7. How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool? Do you believe the risk assessment information now contained in the psychological evaluation is useful to you in making a decision?**

Per the May 2008 training, the psychological evaluation is a tool to consider in the array of suitability factors under Title 15, §2402 and §2281 of the California Code of Regulations.

I incorporate this tool by reading the report thoroughly, having important excerpts from the report read into the record, and giving the inmate and his or her attorney the opportunity to address on record any issues they have regarding the evaluation. If, as the psychologists assert, the best predictor of future violence is past or present violence, then the risk assessment information contained in these evaluations based on psychometric instruments is useful in making suitability decisions.

Multiple Year Denials

Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.

8. What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be?

The criteria I use to determine the number of years for a denial include a weighing of all suitability v. unsuitability factors as described in Title 15 §2281 and §2402 Determination of Suitability. One of the questions I ask in deliberations: Could this prisoner reasonably do what he or she has to do in order to be eligible for parole within the timeframe I am considering? The panel must also consider the inmate's past behavior and program performance as well as hearing testimony in making the decision.

The panel has great discretion in determining whether a prisoner is suitable for parole, and if not suitable, how long a period of time must pass before it is realistic for that prisoner to be found suitable for parole. The only requirement is that a specific reason or reasons must be set forth on the record for the decision made. No legal authority restricts a hearing panel's length of denial based on a prior hearing panel's decision.

Written criteria that *proscribe* the length of a denial:

Penal Code §3041.5(b)(2) provides:

- (A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.
- (B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board find that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing.

9. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?*

Program availability is outside the control of BPH. We must therefore obtain as much information as possible regarding institution programs and make recommendations to the inmate accordingly. It is important to note that besides program availability, the determination of multi-year denials involves weighing all other factors of suitability, including the inmate's testimony.

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Senate Confirmation
Robert G. Doyle, Commissioner
Board of Parole Hearings
Responses to Senate Rules Committee Questions
June 12, 2008

Statement of Goals

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? How will you measure your success?***

As a commissioner, we are given an enormous responsibility that significantly impacts the lives of many people. The individuals who come before me were given a sentence of life with the possibility of parole and my goals include making sure they are treated fairly, without prejudice, during the process. That the hearing is run professionally and everyone involved with the process is treated in a manner that is conducive with being respected regardless of their role and responsibility in that hearing. Second, I feel it is important that the California Code of Regulations, Title 15 (Title 15) sections 2281 and 2402, Determination of Suitability be followed. Certainly the threshold should be high when evaluating the individual for parole, as one of our primary goals is preserving public safety. One of my objectives is to ensure that those prisoners who come before me and have shown that they are ready to be paroled, get a date from the panel. Those who are not yet ready, leave the hearing knowing what it is they need to continue to focus on in order to move forward towards parole.

During my tenure on the board I hope to contribute in a way that has a positive impact on the process, the people I come into contact with, and on improving the overall relationship that the Board of Parole Hearings (BPH) has with the other stake holders in this area of government. Certainly my role is not one that is far reaching, but by setting the example for others to see, can make a compounding difference. In my humble opinion, with the appointment of Executive Officer, Martin Hoshino, positive changes are being made and he has the skill sets to lead the Board in a direction that I believe will benefit all parties who interact with the Board. If those who are interacting with me have a positive experience, feel they are treated fairly, feel I am objective, that I genuinely listen and consider all aspects of the issue without bias, then I have been successful.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion.***

There are individuals with these sentences that have been rehabilitated and returned safely to society. I have given parole grants to such people. The California Department of Corrections and Rehabilitation (CDCR) has many programs available to assist individuals with developing the skill sets needed to return to society: Vocations; substance abuse; conflict resolution; anger management; victim awareness; and developing insight and understanding into who they are and why they were

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functioning in a manner that caused them to commit a serious crime. It is interesting to see the progress these individuals make, and discuss that with them in the hearings. Some make the decision to change who they are and their life sooner than others. Some may never change and continue to be that person who committed the crime. Those that are changing have made that commitment from their heart and that becomes very apparent. Certainly, research indicates that life inmates' recidivism rate is very low.

Training

3. *Is your training adequate or do you have recommendations for improvement?*

Since the arrival of Mr. Hoshino, the training has improved and the suggestions of the commissioners are being considered. Our most recent training in May of 2008 was the best we have had since my arrival on the board. The training focused primarily on the intricacies of what is expected in Title 15 as it relates to our decisions and on increasing the quality of our hearings as it relates to the decisions we make. This is critical, not only for the commissioners, but also for the individuals who appear before the panel for parole consideration. I would recommend that additional legal training continue as this will also assist in ensuring well-informed decisions are being made.

4. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime?*

Certainly the format of the hearings should be consistent as to process and all of us should utilize the factors of determining suitability provided in Title 15. There is an important subjective part of the hearing that provides personal interaction between the panel and the individual seeking parole i.e.; body language, voice inflections in speech, and attitude displayed as it relates to their genuineness about changing that is subjective in nature. Each commissioner and deputy commissioner bring their own life experiences strengths and weaknesses to the process. The key is to know and understand yourself and not let it become a hindrance in the hearing. The life crime is important, but it will never change. Some life crimes are going to carry more weight than others depending on the circumstances of the crime. It is important to evaluate this in the context of what the individual has done to change in order to ensure that that behavior does not occur again in the community. They were sentenced to life with the possibility of parole and we can not lose sight of that. But it is up to the individual to do what they can to maximize that possibility.

- 5. Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.**

Earlier this year I had an opportunity to visit the shoe factory at an institution and discuss with inmates their experience. The boots they produce through this Prison Industry Authority program are sold to the state at a nominal profit. The individuals were very proud of the product they were making and had a sense of accomplishment when speaking to them. I also had an opportunity to observe the hospice program at one of the institutions and was very impressed with this program. The individuals get 30 hours of training before going to work and constantly have to assist hospice patients in a variety of ways. It instills empathy in them and helps them to realize their own mortality. The environment also gives them an opportunity to practice conflict resolution skills on a daily basis, as they interact with patients, doctors, nurses and staff. As a commissioner, I see the positive effect of these programs on the individual in the hearing when discussing their programming with them.

Psychological Evaluations

The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement.

- 6. What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? What is the BPH policy regarding this issue?**

It is my understanding that the current BPH practice is a new psychological evaluation every three years. Certainly one of the factors we as commissioners are evaluating is change in the person as it goes towards the person being a threat to society. The evaluation needs to be completed often enough for the psychological evaluation to assist us in that evaluation. Three years seems to be adequate.

- 7. How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool? Do you believe the risk assessment information**

now contained in the psychological evaluation is useful to you in making a decision?

Currently, the psychological evaluation is viewed as one variable in the whole decision. A lot of the evaluation is based on what the individual tells the psychologist. I will look for inconsistencies in the individual's statement as it relates to the critical areas going towards remorse, insight, facts and am particularly concerned with risk of future violence. The use of the empirical research assessment tools such as the HCR-20, PCL-R, and the LS/CMI instruments is very useful and appreciated because those assessments reduce the subjectivity of the doctor's final conclusions.

Multiple Year Denials

Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.

8. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be?*

First, the panel relies on Penal Code Section 3041.5 and Title 15, sections 2268 and 2270 as guidelines for issuing multi-year denials. Second, the panel has the ability to be subjective to some extent, reviewing the following areas:

A) Programming by the inmate:

1. Has he continued or stopped programming?
2. Is it pertinent to his problems?
3. What is it? Is he refusing to program?
4. Did he accomplish what the last panel requested of him?

B) Discipline:

1. Any since last hearing?
2. Any violence?
3. Any administrative segregations?
4. How is his attitude towards staff, other inmates?

The above is just an example of some of the areas the panel will explore in determining one year vs. multi-year denials. If the inmate is continuing to make progress in a positive manner and has been on one year denials, then he should continue to get one year denials until a panel determines he is ready to be granted parole. If he has regressed due to programming issues or discipline then he could be subject to a

multi-year denial. We are trained as it relates to the above mentioned Penal Code and Title 15 sections. Discussions do take place in training sessions in regards to using good common sense when reviewing length of denials.

9. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?*

Within the system, as an individual is able to successfully integrate, programming becomes more available to him. Some institutions have more programming available than others depending on their housing levels. The individual plays a large part in determining his programming. In some instances programs may not be available where the individual is located. I do not give a multi-year denial based on certain programs not being available. Certainly, the individual has no control over that situation; the panel will ask the individual to achieve certain goals i.e. independent reading in a certain area that he needs to work on, and report back to the next panel on what he has learned from those readings. Just because a certain program is not available does not mean the individual cannot improve or accomplish the needed exposure to a certain area, in some cases the individual will request a transfer to another facility in order to get certain programming and the panel will ask that the inmate be transferred. The panel makes the individual aware that the decision to grant the transfer is not a decision that the panel controls.

If an individual has a one-year denial, I will not increase it unless it is not reasonable to expect that parole would be granted at a hearing during the following years.

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Senate Confirmation Hearing
Janice K. Eng, Commissioner
Board of Parole Hearings
Response to Senate Rules Committee Questions
June 12, 2008

Statement of Goals

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure? How will you measure your success?***

My main goal continues to be conducting fair and impartial hearings, while keeping in mind, public safety. I want to be able to make a positive difference, an impact on the parole hearing process including fairness to the inmates, defense counsel, district attorneys, and victims/victim next of kin; everyone that participates in the hearings. I want to be in a position that I feel I can give back to my community in some way – and to make a difference.

As I stated in my responses for my confirmation hearing last year, being a commissioner on the Board of Parole Hearings (BPH) puts me in a position to have significant impacts on people's lives. One of my objectives in this position is to continue to help the inmates I see recognize what their role is and challenge them to take responsibility for their own future and success on the outside; so they can be pro-social and contributing members of their communities. Success in this area can be measured by receiving feedback from released inmates as to how they are doing in the communities after their release.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion and what you use to assist you with this analysis.***

I continue to believe inmates can be rehabilitated and safely returned to society. I have granted dates to those that I truly believe are ready, who have set themselves up with solid parole plans as well as backup plans in order to succeed on the outside. I stress that they should set up many safety nets within the community should the stresses of being in the free community become too much at any given time. In this way, they have people and places to turn to instantly to help them stay grounded and on the road to success.

I think it is also important to stress this to inmates that are denied parole and to let them know that they play an critical role in their own futures and what choices they make in their lives.

Engaging inmates in conversations that enable them to elaborate and thoroughly explain their plans is a necessity and gives us an idea as to how much thought the

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inmate has personally gone through in planning their successful futures. I stress to them that it is their responsibility to clearly understand and identify what they believe their personal needs are to be successful. This may mean that they should not parole back to their families right away and many have stated this to me. They believe they will need to transition slowly from their highly structured prison life to life in their own community, so many have chosen to go to residential facilities that provide ongoing counseling and programming geared to the parolee's adjustment back to the community. This type of thinking shows us how serious they are about their success and they are being more realistic about the challenges they will be facing after being incarcerated for so many years.

During the hearings I also ask the inmates questions about their programming and involvement in self-help. Many times I will ask them the same questions in different ways to see if they are consistent and to see if they really do understand what the program is all about, why they are attending, what they get out of attending, and how they use the information they have learned. One key area I inquire is to explain to the panel what the program means to them personally and how they actually apply what they have learned. This is how we find out if they are attending programs for the right reasons and not just because the board asked them to.

Training

3. Is your training adequate or do you have recommendations for improvement?

I have found the training we receive adequate, especially the training we recently received in May 2008 which focused on specific areas in the hearing process that we commissioners deal with on a daily basis.

4. What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime?

All commissioners have a BPH provided format that contains standard procedures for initial and subsequent hearings. I work together with the deputy commissioners in going through the grant or denial to determine the appropriate factors to be considered and we discuss and determine together what our final decision will be. In situations where we do not agree and are split on granting a date, then each of us will complete the respective grant and denial and present our separate decisions and reasons during the reading and final phase of the hearing.

Each hearing is different regarding what factors to consider and how much weight we give to any one thing. I always write out a list of all prior decisions, dates and dispositions, when I am preparing a case. Some cases are much more complicated than others and may require more time and research than most cases on average. My practice is to look at one or two prior hearing transcripts, but I generally focus on particular areas, such as how the previous hearing panel assessed the inmates mental state before and after the offense and how it compares to the psychological evaluation, the recommendations of the hearing panel to the inmate, and what the inmate said about certain things. This is important if the inmate has a history of changing his story. However, I do my best to not be influenced by prior decisions as every day is a new day and you never know how the inmate will present himself or if there were any significant events that have occurred since the last hearing.

5. *Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.*

I have not had the privilege of attending or observing any programs at any institution. I feel that this would be something that could be added to our training agenda. Unfortunately, due to the hearing schedules, we do not have any time at the institutions. Once we arrive, we are preparing for the hearings for the day, making sure we have last minute documents that were not included in our packets, making sure the inmates are being brought up to the hearing rooms, briefing victims/victim next of kin, meeting with the district attorneys and defense counsel to see if there are any issues, checking to see if we have all paperwork for each hearing, etc. Once we start the hearings, we go nonstop until we complete the last one. In order to observe prison programming, our hearing schedules would have to be cut back significantly.

An important way for us to see if any type of programming is effective is through the "Q & A" session with the inmate and how well they can describe what the program is about, what they have been learning, and how they apply the concepts.

Psychological Evaluations

6. *What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and a useful tool in the lifer hearing process? What is the BPH policy regarding this issue?*

The frequency for psychological evaluations is three years. In many instances we are provided with a letter from the senior staff psychologist, Forensic Assessment Division (FAD) unit, who has reviewed the evaluation and confirms that it is still valid. We continue to request amended evaluations outlining specific area(s) for a psychologist to focus on that may or may not have been adequately addressed

previously. There are instances where I have moved forward with a hearing with an evaluation that is five years or older – in many of these cases the inmate received a serious rules violations or experienced other problems since their last hearing and a current evaluation would not impact or influence the panel's decision.

- 7. *How have you been trained regarding the role of psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool? Do you believe the risk assessment information now contained in the psychological evaluation is useful to you in making a decision?***

We received updated training on this subject in May 2008. The psychological evaluation is used in conjunction with our analysis of the documentation we have on an inmate along with responses to the panel during the hearing that focus on the inmate's past and present mental state and attitude prior to, during, and after the life crime. The risk assessment tools now used in the evaluations are very helpful and are much more objective.

Multiple Year Denials

- 8. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be?***

For a one-year denial, I look at all previous decisions and whether the inmate has received one or more one-year denials in a row. Once we complete the hearing and enter into deliberations, the panel looks at whether the inmate meets all criteria for suitability. If he does not, but has maintained or improved his programming and overall performance yet does not quite have everything in order, then we may issue a one-year denial. The one year denial gives the inmate a chance to firm up everything and/or provide the next panel with the proper documentation.

The panel follows the factors of suitability found within the California Code of Regulations, Title 15, Sections 2281 and 2402, along with the 11 page denial form to document decisions. However, the length of denial is determined after a full discussion whether or not 12 months will be enough time for completion in areas the inmate may be deficient.

- 9. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?***

Whether or not an inmate can receive the programming that they need is not used to determine the length of a denial. The commissioners do recommend that the inmate

seek whatever self-help or programming that is available to them to help them address certain issues in question. It is their choice and their decision if they want to seek this out or not. I suggest that they be able to discuss that they understand what a program is all about, why they are attending, and how they apply what they learn. I also suggest that they read magazines, books, watch videos, listen to tapes, etc. and document what it is that they did, what it meant to them, and how they use it; and to bring this information to the panel as this is also documented self-help. Availability of programs is not a factor that I consider to determine non-suitability; our decisions are based upon many factors and to provide an inmate with adequate time to comply with recommendations given by the Board.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting department in ensuring the integrity of the financial statements. It also highlights the need for transparency and accountability in the reporting process.

2. The second part of the document outlines the various methods used to collect and analyze data, including surveys, interviews, and focus groups. It also discusses the challenges associated with data collection and the importance of using a variety of methods to ensure the reliability of the results.

3. The third part of the document describes the results of the data collection and analysis, including the identification of key trends and the development of recommendations for future action. It also discusses the importance of ongoing monitoring and evaluation to ensure the effectiveness of the interventions.

4. The fourth part of the document provides a summary of the findings and conclusions, and discusses the implications for policy and practice. It also includes a list of references and a glossary of terms.

Senate Confirmation
Edward Martinez, Commissioner
Board of Parole Hearings
Responses to Senate Rules Committee Questions
June 12, 2008

Statement of Goals

1. What are your goals and objectives as a member of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? How will you measure your success?

My objective as a member of the Board of Parole Hearings (BPH) is to conduct fair and impartial parole consideration hearings addressing each case individually. My goal is to continue to earn the respect of all those involved in the hearing process by providing fair and impartial hearings and to maintain an ethical standard of conduct throughout my tenure.

During my tenure, I would like to continue working towards the reduction of the Rutherford/Lugo case backlog and observe substantial compliance in this matter. I will remain current in training, education and the laws in order to provide me with the resources to make sound decisions.

A measure of success is reducing the Rutherford/Lugo case backlog and to remain in compliance with the lawsuit. This ensures that hearings will be conducted in a timely manner and not violate the prisoner's due process.

2. Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to this conclusion.

I strongly believe that an inmate can be successfully rehabilitated and safely return to society. This conclusion is drawn from the hearing. The hearing provides the facts of the crime; the prisoner's prior criminal history; programming status; disciplinary record in the institution; whether or not the inmate has gained insight and responsibility; has come to terms with the life crime; has adequately expressed genuine remorse and empathy and truly understands the causative factors of the life crime. I have received feedback from the attorneys that represented the prisoners and was advised they are doing well out in free society.

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Appointments

Training

3. Is your training adequate or do you have recommendations for improvement?

The BPH provided the majority of the training when I was first appointed. The training initially consisted of an overview of BPH followed by diverse training including:

- Ethics
- Victim services
- Gangs overview
- Rutherford/Lugo case
- IPB, aka Battered Women Syndrome investigations
- Legislative functions
- Term calculations
- En banc executive board meeting
- Central file training
- Lifer hearings process preparation/completing lifer forms
- Victim advocacy/Violence and Sexual assault
- How to review grant and denial transcripts
- Major litigation
- Institutional security
- Investigations unit functions
- Foreign prisoner transfer program
- Legal review
- Off-site hearing observations
- Mock hearings
- American Disabilities Act

In addition, there is monthly ongoing training for commissioners. In December 2007 and most recently in May 2008, there was additional training in the areas of:

- Lifer Scheduling Tracking System (LSTS) training
- *Clark vs. California* (Court Compliance)
- Forensic issues
- Status of clinical psychological evaluations (Forensic Assessment Division [FAD] within BPH)
- Making record of decisions
- Case law
- Overview pending litigation
- Bagley-Keene act

Ongoing training should include continued legal updates to the board members and being informed of ongoing BPH functions. BPH and the legal division have done a good job of keeping the board members abreast of all the current changes and legal issues.

4. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the crime?*

All board members are provided with the required format for conducting lifer hearings and are expected to follow the process.

All board members and deputy commissioners should weigh the various factors in a consistent manner. The appropriate emphasis is based on multiple factors: the facts of the crime, parole plans, psychological evaluations, criminal history, institutional behavior, programming, insight, remorse and empathy. The facts of the crime are a focus, but other contributing factors have to be considered and given their appropriate weight. All factors are important when considering suitability for parole.

Each case is handled individually. Changes could have occurred since the inmates last hearing that need to be taken into consideration. I would go through the same process to make my decision based on the information available at the hearing to determine if the inmate is suitable or unsuitable for parole at the time of the hearing.

5. *Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.*

I have not had the opportunity to observe any educational, vocational or self-help programs within the state prisons. This is due mostly to time constraints and heavy scheduling of parole lifer hearings. One way for the commissioners to observe these programs is to schedule them as part of our training. Otherwise it is difficult to find the time during our regular schedule of hearings at the prison.

The effectiveness of a program is usually determined through discussion with the inmate during the hearing. Program effectiveness is based on what is available to the prisoner and can they demonstrate knowledge of current skills.. Moreover, the inmate is offered the opportunity to maintain updates; for example in the area of auto mechanics or the computer industry. Some institutions provide the Commissioners with an updated list of all programs available throughout the facility. The programs will vary depending on the inmate's classification status as well as his housing area.

Psychological Evaluations

The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement.

6. *What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? What is the BPH policy regarding this issue?*

It is currently my understanding if a psychological evaluation is more than three years old there should be a request for a new evaluation. Currently the FAD supervisors are conducting additional assessments on evaluations to make a determination if the current psychological evaluation is appropriate or if there is a need for a new evaluation. In regards to the BPH/FAD practice I believe if the psychological evaluation is more than three years old a new evaluation will be completed.

7. *How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool? Do you believe the risk assessment information now contained in the psychological evaluation is useful to you in making a decision?*

Psychological evaluations play an important role, as do other factors in determining parole suitability. All factors presented at the hearing are given their appropriate weight.

Each hearing is different and should be considered on an individual basis. The risk assessment information is important but it is not the only tool we use in making a determination as to how much weight should be given to the evaluation. There are other factors in the body of the evaluation that are considered: for example, an inmate might be assessed as a low risk to the community however, there could be noted inconsistencies regarding his life crime which could reveal issues concerning lack of responsibility, understanding and insight to his or her crime.

Multiple Year Denials

Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.

8. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be?*

If an inmate received a one-year denial at his previous hearing, is found to be unsuitable for parole at the current hearing and there is nothing to justify giving the inmate more than one year, I will maintain the one-year denial. Exceptions are when an inmate has not been programming or has had recent disciplinary issues, which could justify a multi-year denial. Another example is when an inmate's vocation is obsolete and he/she needs to obtain a new vocation. Usually it is not realistic for an inmate to obtain a new vocation within a one-year time frame. A multi-year denial might be more appropriate and in the best interest of the inmate. The last thing I would want to do is set the inmate up for failure when it is not realistic for he/she to complete their goals. Decisions rendered are done on an individual basis.

9. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?*

One way to determine this is by contacting the institution as to the availability of programs. Another option is to address this issue with the inmate during the hearing. Keeping in mind the other options an inmate has; for example, if an inmate cannot receive the programming they need through classes, they have an option to take self-study which consists of going to the library checking out a book and doing a book report to present to the panel. If an inmate has not taken the initiative to help himself or herself and cannot adequately explain why he or she has not been able to program, then it is possible that a multi- year denial would be appropriate. The panel when making this type of decision would need to confirm the availability of programs before and appropriately apply criteria of Penal Code section 3041.5 before considering a multi-year denial.

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SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 5, 2008

Jerome S. Moss

Dear Mr. Moss:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the California Horse Racing Board on Wednesday, June 18, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 27, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 27th.

Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your next term on the Horse Racing Board? How will you measure your success?*

Horse Racing Industry

Gambling is a growing industry in California with about \$13 billion in gross wagering. However, the horse racing industry is not matching the rest of the gaming industry with gross wagering growing slightly from \$3.58 billion in 1997 to \$4.26 billion in 2006. Advanced deposit wagering and satellite wagering have helped keep revenue steady.

Furthermore, attendance at racetracks has dropped precipitously, from 10.9 million in 1997 to 2.9 million in 2006. There are seven racetracks in California and nine county fairs that conduct horse racing. Bay Meadows, one of the seven horse racing tracks, will close at the end of August 2008. In 2006 the board created the Strategic Planning

Committee to analyze the horse racing industry, which has been said to be at a tipping point. Larger purses at out-of-state racetracks have lured owners and their horses to other venues that used to run in California.

2. *How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?*
3. *What steps, if any, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?*
4. *What role does horse racing at county fairs play in the future of horse racing in California?*

Conflict of Interest

California is the only major horse racing state in the nation that permits all of its board members to race horses in the state, despite criticism that policy makers are too vested in the industry to be unbiased. In 2007 the board drafted its own conflict-of-interest policy.

5. *Has the board adopted its own conflict-of-interest code? What is the status of this matter?*

Problem Gambling

In an August 2006 report, the Office of Problem and Pathological Gambling, administered by the Department of Alcohol and Drug Programs, said that there were approximately 300,000 pathological gamblers and another 400,000 problem gamblers in California. The study found that problem gamblers are more likely than other past-year gamblers to prefer sports and track betting.

6. *How is the board addressing problem gambling?*
7. *Besides the referral to the Office of Problem Gambling that is on the board's Web page, does the board provide any other information or referral information for problem gamblers?*

Synthetic Tracks

The board has decided to require horse racing tracks with meets of longer than four weeks to install a synthetic material on their horse racing tracks for safety reasons. Evidence suggests that damage to horses can decline up to 85 percent with the use of synthetic tracks. While synthetic tracks also benefit jockeys who fall with the horses, concern has been raised by the Jockeys Guild over the long-term health effects of jockeys breathing this material, which is composed of plastics and rubbers.

Moreover, last December the president of the Santa Anita Racetrack called its newly installed synthetic track a nightmare because of severe drainage problems. After a particularly wet season, Santa Anita has lost 11 racing days because of these drainage problems.

According to recent news articles, Santa Anita operators announced in February—after meeting with horsemen, veterinarians, jockeys, and owners—that the present surface would be completely replaced at a cost of nearly \$10 million and replaced with another form of synthetic which, at this time, has not been chosen.

8. *What has been the experience, to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries has been experienced?*
9. *Has the board undertaken a study of the possible long-term health effects of jockeys inhaling the material from synthetic tracks?*
10. *Are the problems with the synthetic track at Santa Anita a problem with the synthetic material or with its installation and maintenance?*
11. *What steps is the board taking to prevent the problems with the Santa Anita synthetic track from recurring with future synthetic tracks?*

Track Closures

As mentioned above, Bay Meadows will close at the end of August 2008. Bay Meadows Land Company, the owner of the track, is directing a project to redevelop the 83-acre site into housing, office, and retail space through the city's planning process. In Southern California the future of Hollywood Park also remains in serious doubt. These changes in the racing landscape will require a reconfiguration of racing calendars and stabling venues throughout the state.

12. *What is the board's role in addressing future track closures?*

13. *Should the number of racing days be reduced, or should they be divided among the remaining tracks?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Don Perata". The signature is written in dark ink and is positioned above the printed name "DON PERATA".

DON PERATA

DP:MS

cc: Horse Racing Board

Jerome S. Moss
For Senate Rules Committee
June 2008

- 1) To help broaden the scope of horse racing in California in a positive way - to assist in creating venues for our great sport that are well-run and to be scrupulous as to the regulations so that the public will never question our integrity.
- 2) I believe racing has to be run more like a business enterprise and at the same time we must have the Government's support to succeed. Its financial future is dependent on a fair share of the gaming opportunities in the State. Without the income derived from gambling we cannot survive as a major sporting attraction.
- 3) As in any other enterprise, I believe that stars create audiences. Incentives should be granted owners to create equine stars who will continue to race in California. I believe this will create greater awareness and eventually larger attendance figures. Also to promote and market our sport by expanding into the already existing gaming opportunities such as potential tie-ups with the State lottery, Indian gaming and the newly designated 45 off-track wagering facilities throughout the State.
- 4) The Fairs present excellent opportunities to appeal to a younger fan base. More young people probably get their first glimpse of a horse race at a State Fair than at a traditional race track. So, as long as the Fairs are professionally maintained and marketed properly, I believe the future of horse racing will always benefit from it's exposure at a well-run County Fair.
- 5) I'm not sure of exactly what is the state of a conflict-of interest code at present. I believe individual horse owners and breeders are accepted as Commissioners but not if a potential member has an interest in a race track or a sales company with a business catering to the horse industry.
- 6) By directing problem gamblers to the institutions that will offer help.
- 7) Not that I'm aware of.
- 8) I believe that catastrophic injuries to horses during races have dropped compared to earlier figures from racing on dirt.

Senate Rules Committee

JUN 06 2008

Appointments

- 9) Not to my knowledge, I believe this study should be conducted by an “outside” research firm – otherwise the findings will have the chance of being influenced by the different synthetics manufactures.
- 10) The problems with the synthetic track at Santa Anita are due to the fact that a different kind of sand was used that had been originally used at Hollywood Park. Once it rained, it didn’t drain properly and because it was an entirely new situation the maintenance people were never given the opportunity to learn how to deal with a relatively new set of difficulties. Obviously, not enough data was collected before this well-intentioned commitment was made.
- 11) We are not authorized to do much more than ask questions and perhaps hold back race dates. The installations of synthetic (or dirt) tracks for that matter is completely the responsibility of the stakeholder. It’s their investment and we can only hope they make the right choice for California racing.
- 12) Again, there is no way we can do anything about a track owner wanting to close down his operation and develop the property for other uses.
- 13) A small reduction might be advisable. The remaining dates, in my opinion should then be offered to existing tracks. However, the stabling and training facilities now housing between 1,500 and 2,000 horses and where they can go (once Hollywood Park closes) is, I believe, a cause for an even greater concern.

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26 Evelyn J. Mizak
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SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

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DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

CAROLINE S. NEVANS, Administrative Director
Division of Workers' Compensation

ANGIE WEI
California Labor Federation

LIBERTY SANCHEZ
Teamsters and UFCW

STEVE CATTOLICA
California Society of Industrial Medicine and Surgery
US Healthworks
California Society of Physical Medicine and Rehabilitation
VQ Orthocare

SUE BORG, President
California Applicants Attorneys Association

1 LINDA ATCHERLEY

California Applicants Attorneys Association

2 PATRICIA MENDOZA, Injured Worker

3 Formerly with CDC&R

4 GARY L. HOAG, Injured Worker

5 Formerly with California Highway Patrol

6 JESSIE CENICEROS, President

7 Voters Injured at Work

8 CHRISTIE BOUMA

California Professional Firefighters

9 JULIANNE BROYLES

10 California Association of Joint Powers Authorities

11 CYNTHIA LEON

12 California Manufacturers and Technology Association

13 SCOTT D. LIPTON

California Coalition on Workers' Compensation

14 JASON SCHMELZER

15 California Chamber of Commerce

16 MARYGRACE CONEFF, Board Member

17 Voters Injured at Work

18 ALAN LENNOX WELSH, Division Chief

Occupational Safety and Health

19 Department of Industrial Relations

20 JULIANNE BROYLES

California Association of Joint Powers Authorities

21 California Grocery Manufacturers Association

22 ANGIE WEI

23 California Labor Federation

24 ELIZABETH TREANOR, Director

25 Phylmar Regulatory Roundtable

26 PATRICK HENNING

27 California State Council of Laborers

28

1 JAMES BRESNAHAN, Former President
2 Bricklayers and Allied Crafts Local 3

3 STEVEN RANK
4 District Council of Iron Workers
5 Western Steel Council

6 MARTI FISHER
7 California Chamber of Commerce

8 BRYAN LITTLE
9 California Farm Bureau Federation

10 BRAD DIEDE
11 California Professional Association of Specialty Contractors

12 JERILYN R. HARRIS, Member
13 State Teachers' Retirement Board

14 KEN HEWITT
15 California Retired Teachers' Association

16 ROSALIE MULE, Member
17 California Integrated Waste Management Board

18 MARK MURRAY
19 Californians Against Waste

20 KEN STODDARD
21 Waste Management

22 JUSTIN MALAN
23 CCDEH

24 KYRA ROSS
25 League of California Cities
26 California State Association of Counties

27 PAUL A. SMITH
28 Regional Council of Rural Counties

KELLY JENSEN
NorCal Waste Systems

CHUCK HELGET
Allied Waste Services

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Appear: Members of the Boating and
Waterways Commission: LENORA S. CLARK and
DOUGLAS W. METZ; Members of the Corrections
Standards Authority: CLEOTHA ADAMS,
ADELE L. ARNOLD, WILLIAM A. POWERS, and
MIMI H. SILBERT, Ph.D.; Members of the State
Mining and Geology Board: ERIN D. GARNER and
ROBERT E. TEPEL; Member, Board of Pilot
Commissioners for the Bays of San Francisco,
San Pablo and Suisun: FRANCIS X. JOHNSTON III

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Rules Committee will come to order.

We're going to go through the agenda in order.

[Therepon the Rules Committee acted upon legislative items.]

CHAIRMAN PERATA: We'll go to File Item 3, the Governor's appointees who are appearing today.

Caroline Nevans, the Administrative Director of the Division of Workers' Compensation.

Ms. Nevans, welcome.

MS. NEVANS: Thank you.

CHAIRMAN PERATA: You may open at your pleasure.

MS. NEVANS: I have an opening statement. Before I do that, I'd like to quickly introduce the members of my family that are here today.

CHAIRMAN PERATA: Good.

MS. NEVANS: My mother, Sally La Favers, and her husband, Phil Sanguinette. My husband, James Nevans, and then my sister, Cynthia Leatherman. And I particularly want to recognize my sister because six years ago, she donated a kidney to me.

CHAIRMAN PERATA: Oh, God bless you.

MS. NEVANS: When I started work as a claims adjustor at State Compensation Insurance Fund 26 years ago, my role was to help injured workers get back to work as quickly as possible, make sure they got appropriate medical treatment, and

1 get back their lives as quickly as possible.

2 But I also saw many ways in which the system
3 wasn't effective: Policies made in a vacuum without input from
4 the people who were really using the system, and without real
5 science as their basis, and often with the narrow perspective
6 that only benefitted a few people.

7 As I've continued forward in my career, I frankly
8 never dreamed that I'd be in the position I'm in today, to
9 administer the state's Workers' Compensation System, a role that
10 allows me to work in ways both small and large to craft a system
11 that's both based on science and more effective for injured
12 workers as a whole.

13 I take this honor and this responsibility very
14 seriously. I understand that my actions have a direct impact on
15 the lives of real people. It's one I'm conscious of on a very
16 personal level through my own experience with being diagnosed
17 with a life-threatening illness, and not knowing if I would be
18 able to continue working, and fighting to receive quality
19 medical care for myself. Through that experience, I learned
20 also how important work is, and its value in keeping a person
21 both healthy and sane. I learned the value of science and facts
22 in any kind of decision-making, and I developed a much clearer
23 understanding of the contribution I'd like to make.

24 Now as the administrator for the last three years
25 of the Workers' Compensation System, I found it's vital to look
26 both at the system from a global perspective and also -- and to
27 create sound public policy based on science, evidence, and
28 facts. The system needs to ensure that we focus on workers

1 recovering from their injuries and returning to productivity,
2 and that employers aren't adversely impacted by uncontrolled
3 costs.

4 I've also strived within the division to make
5 sure that our integrity and how we handle our business is
6 without question, that we're open and inclusive in all of our
7 processes, and that we understand that the decisions we make
8 impact real people on a daily basis.

9 On a personal level, my goal has been to act with
10 empathy, knowing the impact an illness or injury can have on
11 someone's life. I hope the work that I've done to date in this
12 position has showed the commitment I have to both injured
13 workers and employers, and to creating sound public policy. I
14 hope to be allowed to continue that work.

15 I want to thank you for bringing me here today
16 and giving me this opportunity to answer your questions.

17 CHAIRMAN PERATA: Thank you.

18 There are probably a lot of things we could talk
19 about, but there's one thing that we're going to talk about, as
20 we've discussed, and that's permanent disability.

21 This is something that I, as the leader of my
22 caucus, we've worked on this thing for three years.

23 The Governor, both by comment and action, has
24 really licensed you to make the decision. He's said at the
25 threshold, when the law was passed, and the law's been
26 successful it's one of the few bulbs on his tree, he said, "I
27 don't want to do it at the expense of injured workers."

28 Now, three years later, we are at a point now,

1 and he said that he wanted to have empirical, not anecdotal,
2 data. So, there has to be some basis upon which a decision has
3 been made.

4 So, you've done the studies. I never even knew
5 what a crosswalk study was before this. I don't know if you
6 did, either, but now I own one.

7 So, what were main findings from the studies that
8 your department has conducted?

9 MS. NEVANS: There have been a number of
10 findings.

11 First of all, we do acknowledge that permanent
12 disability benefits have been reduced now that we're using a
13 schedule that requires objective findings.

14 But we've also found that return to work has
15 improved since the reforms, and return to work is one of the
16 main elements that reduces wage loss for injured workers.

17 So, we have seen improvements in return to work
18 that helps mitigate wage loss, but I do agree that benefits have
19 been reduced.

20 CHAIRMAN PERATA: Would you say that the goal of
21 the law originally was to have these steep declines in benefits,
22 or is that a by product?

23 MS. NEVANS: Well, I think the goal was to make
24 sure that the permanent disability rating system was based on
25 objective evidence. And that's by using the AMA guides as the
26 basis for the permanent disability ratings.

27 I don't know, because there's not much
28 legislative record on whether any discussions were held as to

1 whether that would result in higher or lower ratings, but it has
2 resulted in lower ratings.

3 CHAIRMAN PERATA: There wasn't a lot of this done
4 in public.

5 You have a 16 percent, I guess that's your
6 baseline recommendation. How did you arrive at that?

7 MS. NEVANS: Well, this takes into account the
8 most recent wage loss data that we have, which is for workers
9 injured in 2003.

10 We're still hampered by the fact that we don't
11 have what we call the ideal data, which is wage loss data for
12 people injured after the reforms, when all of the elements of
13 the reforms were in place.

14 But using that 2003 wage loss data, we adjusted
15 it for the improvement in return to work and the increase in
16 weekly temporary disability rates have occurred since then and
17 came up with a newer, more up-to-date wage loss percentage. And
18 what I've done generally with this range is, it's created a
19 one-to-one ratio overall between permanent disability ratings
20 and percentage of wage loss.

21 CHAIRMAN PERATA: Then the next step is, you take
22 that out on the road for a test drive. You have two hearings
23 set?

24 MS. NEVANS: That's correct. I have public
25 hearings set in Los Angeles and Oakland on July 21st and 22nd,
26 and we're also taking written comments.

27 CHAIRMAN PERATA: You should be prepared as you
28 go through that that when people parse that number 16, you can

1 make a case that it's a much lower number in terms of what it
2 actually means. And I know that because I've done that. So,
3 that's something that I'm sure you're going to want to address.

4 What are you looking to get of these hearings?
5 Or are they just perfunctory?

6 MS. NEVANS: No, they're a critical part of the
7 decision-making process. In the past, as we've gone through
8 rule making and had public hearings and taken public comments,
9 we've made major revisions in our regulatory packages based on
10 the things the people in the industry and the participants in
11 the workers' comp system are telling us.

12 CHAIRMAN PERATA: Now, when we have hearings, and
13 I'm sure today is going to be a prime example of them, often
14 times we ask questions, and we receive answers that are nice,
15 but not on point.

16 What do those that testify have to demonstrate to
17 you? What are you looking for?

18 MS. NEVANS: Well, I'm really looking for how
19 people would interpret the data differently, and if so, why.

20 CHAIRMAN PERATA: We have a couple of injured
21 workers here. Injured workers have become like family members
22 now around here; we've seen them so long.

23 So, you're not interested, because all they know
24 is anecdotal. If I'm injured, the guy down the block's injured,
25 too, but I'm more concerned about my back.

26 So, do what you need to hear from injured
27 workers, because I'm sure you're going to hear from a lot of
28 injured workers?

1 MS. NEVANS: Well, I'm expecting to hear from
2 injured workers their personal experiences, but my role as the
3 Administrative Director is to look at aggregate data, not
4 necessarily the particular experience of a particular injured
5 worker. So, what I'm really looking at is the aggregate.

6 But of course, I'm always concerned about impact
7 on individuals, but my decision-making is based on aggregate
8 data.

9 CHAIRMAN PERATA: What is the time period after
10 which the comment period ends?

11 MS. NEVANS: There's not a specific time period
12 that we're required to do, but we plan to, if we make revisions
13 in the regulations, we'll do it fairly quickly because our goal
14 is to have these regulations be effective January 1st, 2009.
15 So, we don't have a lot of time to waste. We'll turn them
16 around quickly.

17 CHAIRMAN PERATA: When you say "quickly," I don't
18 want to hold you to a date, but is that a month after?

19 MS. NEVANS: Something like that.

20 CHAIRMAN PERATA: Wise.

21 I think other Members have questions.

22 SENATOR PADILLA: Not so much a question, but
23 certainly I want to support the sentiments and concerns of the
24 Pro Tem about the schedule.

25 The way I see it, just doing simple math, cutting
26 permanent disability benefits by 50 percent and then restoring
27 16 percent of the cut is still a 34 percent cut at the end of
28 the equation here.

1 Mr. Pro Tem, it seems to me that the confirmation
2 process provides a year from the date of appointment to confirm
3 or not confirm. We're still early in that clock. Maybe some
4 additional time is in order so we can pursue and observe not
5 only the appointee's actions on this topic but others as well.

6 CHAIRMAN PERATA: He went to MIT, so the math is
7 probably accurate.

8 Did you graduate or you just went there?

9 [Laughter.]

10 SENATOR PADILLA: Nice place to visit.

11 CHAIRMAN PERATA: First time I've ever thought to
12 ask.

13 By the way, Members are not being overtly rude.
14 There are committee bills being heard, and this is the last week
15 of the deadline. So, that's why they're not here.

16 I mean, we're normally kind of rude, but this is
17 extraordinary.

18 Why don't we hear from anybody who'd like to
19 speak in favor, or if you have concerns. I know a number of
20 unions have talked about concerns that they'd like to express.
21 That's perfectly fine.

22 MS. WEI: Thank you, Mr. Chair and Members.
23 Angie Wei on behalf of the California Labor Federation.

24 I love being here.

25 CHAIRMAN PERATA: We love having you.

26 MS. WEI: Thank you very much for this
27 opportunity.

28 We are here to express dire concerns about the

1 appointment of Ms. Nevans to be the Administrative Director for
2 the Division of Workers' Comp.

3 I want to say first on the record that we believe
4 Ms. Nevans has done an admirable job in doing the day-to-day
5 administration of the Division. This is a tough job to
6 implement many of the reforms from SB 899, and from an
7 administrative managerial perspective, she has done a good job
8 at making sure regulations are coming, that rule making is
9 proceeding, and to set a table for the discussions among
10 stakeholders along important issues like return to work.

11 That being said, we have dire concerns about the
12 permanent disability schedule. And I looked on the Division of
13 Workers' Comp's web site to understand their mission. And from
14 their web site, the Division's mission is to minimize the
15 adverse impact of work-related injuries on California's
16 employees and employers.

17 And on the one major policy decision that affects
18 injured workers coming out of the Division, Ms. Nevans has
19 failed to act in support of the injured workers.

20 I want to put the 50 percent cuts in PD benefits
21 into context. For those injured workers who still get a rating
22 in the permanent disability system, they're experiencing 50
23 percent lower -- a cut in benefits. But there are almost 70
24 percent of the dollars missing from the PD system. Nearly a
25 third of all injured workers who used to get a rating now get no
26 rating because we've gone to the AMA guides. We sadly call them
27 the zeros. They now get nothing.

28 So, it's not just -- those workers who still get

1 benefits, get half of what they would have gotten under the old
2 schedule. We've actually lost nearly 70 percent of total PD
3 dollars.

4 This has to be fixed. And a 16 percent benefit
5 increase through proposed regulations simply isn't enough,
6 especially when you look at the Division's own data. The
7 Division -- and I'll just cite one example that we've used in
8 our letter to the Committee.

9 The Division's own data shows that for a spinal
10 injury, three years of wage loss is \$40,000 -- a little over
11 \$40,000 for that injured worker. The net loss after temporary
12 disability benefits is a little over \$29,000. Currently, that
13 injured worker with a spinal injury would receive \$15,000.
14 Under the proposed regulation, they would be bumped up to
15 \$19,000. That injured worker is still, at a minimum, \$10,000
16 less in benefits than where he or she should be after the
17 three-year net loss after temporary disability benefits, and
18 \$10,000 is a lot of money for a family and for a worker who has
19 no other means.

20 So, we do hope to continue to work with
21 Ms. Nevans to try and shed a light, shed more light on the data
22 that is being presented, and we look forward to appreciating an
23 improved permanent disability schedule.

24 Thank you very much.

25 CHAIRMAN PERATA: Thank you.

26 MS. SANCHEZ: Good afternoon, Mr. Chair and
27 Members. Liberty Sanchez on behalf of the Teamsters, and UFCW,
28 and several other unions.

1 I do want to underscore the comments made by
2 Ms. Wei, that we have been very appreciative of the open line of
3 communication Ms. Nevans has established in her role as acting
4 AD, and also her openness to inviting us to all sorts of
5 meetings, and always willing to respond to phone calls and
6 e-mails very quickly.

7 That being said, the primary importance of
8 permanent disability and the need to amend the existing
9 permanent disability rating schedule to be reflective of the law
10 as written, not reflective of the PDRS as promulgated by the
11 previous Administrative Director, is absolutely imperative to
12 the unions and the members we represent.

13 One of the big problems we see with the existing
14 permanent disability rating schedule, and the fact that it fails
15 to mesh with the underlying law as written, is the fact that in
16 contradiction to what Ms. Nevans said regarding the law, the
17 intent of the law being to base the permanent disability rating
18 schedule on objective data based on the AMA guidelines, if you
19 look at the legislative history, if you look at the law as
20 written, the intent was not to base it purely on the AMA
21 guidelines, but rather to base it on the AMA guidelines in
22 conjunction with empirical data collected by Rand.

23 Had the PDRS been promulgated to reflect the law
24 as written, those zeros would not have resulted in zeros, and
25 you would have not seen the 50 percent reduction in the
26 permanent disability ratings for those folks who are still
27 rated. You wouldn't have seen the 30 percent loss. And more
28 importantly, you wouldn't have seen a direct contradiction in

1 what was the intent of the Legislature: to give an increase to
2 those injured workers who were most severely injured.

3 There was supposed to be an increase in the
4 number of weeks to the 70 percent rated and above. And because
5 there has been such a dramatic reduction in those folks that are
6 still rated with permanent disability so that fewer people
7 actually get their 70 percent rating, the folks that would have
8 been entitled to that increase under SB 899 as written have not
9 been.

10 For those reasons and several others, because of
11 the concerns we have with permanent disability, we want to
12 express our concerns with the confirmation of Ms. Nevans.

13 Thank you.

14 MR. CATTOLICA: Senator Perata, Committee, thank
15 you for having me here. My name is Steve Cattolica. I
16 represent the California Society of Industrial Medicine and
17 Surgery, US Healthworks, Incorporated, California Society of
18 Physical Medicine and Rehab, and VQ Orthocare.

19 These four clients provide evaluations and
20 treatment to roughly 25 percent of all injured workers in
21 California.

22 I'm here in support of the confirmation of Carrie
23 Nevans' directorship. My 25 years of experience, I've dealt
24 with over half a dozen different Administrative Directors, and
25 she's among the best.

26 Her tenure here, and I don't have to tell you
27 this, I'm sure you're aware, but began under very difficult
28 circumstances. She inherited a situation where the Legislature

1 and the administration charged the Division with implementing
2 regulations that were far sweeping changes in the workers'
3 compensation system. The legislation was poorly drafted. It
4 opened gaping holes in many issues, and lacked clarity in many
5 of the so-called reforms.

6 In addition, it's my opinion that she inherited a
7 staff whose morale was at very low ebb.

8 When she began, the scope and consequences of all
9 those regulations remained to be promulgated were far reaching
10 and complex, to say the least.

11 In addition to the work ahead of her, she
12 inherited a newly enacted PD rating schedule that we're
13 discussing, as well as medical provider network regulations,
14 both of which are problematic to this day.

15 As you may be aware, among the current projects
16 she's undertaking is a promulgation of medical treatment
17 guidelines, audits of the utilization review process, a complex
18 update of the physician fee reimbursement schedule, electronic
19 billing regulations, an extremely problematic upgrade to the
20 Workers' Compensation Appeals Board management system called
21 EAMS.

22 She's got one of the hardest jobs in the state.
23 She can't possibly make everybody happy, but yet she's
24 insightful and careful. She's responsive and accessible to the
25 entire community. In addition, her talented staff is now upbeat
26 and they work hard.

27 I can't tell you, I won't tell you, that we agree
28 with everything that she's done, nor the work that the

1 administration has -- has accomplished so far, but I can say,
2 however, that she's thorough, and with the assistance of her
3 skilled staff, has done an outstanding job as the acting
4 Administrative Director.

5 I'd be happy to answer any questions you may
6 have.

7 CHAIRMAN PERATA: I have one question about 1984.
8 I've heard that there have been some procedures
9 that have not received an adjustment on reimbursement since '84.

10 MR. CATTOLICA: That's correct.

11 CHAIRMAN PERATA: Like what?

12 MR. CATTOLICA: Many of the arthroscopic surgery
13 procedures, most of the innovations, the CPT codes that are
14 available under the official medical fee schedule today weren't
15 created then, and so they -- although they are billed with those
16 CPT codes, there's no value attached to them in a formal basis,
17 and so most of those -- that reimbursement is done by
18 negotiation.

19 CHAIRMAN PERATA: Almost like they didn't exist?

20 MR. CATTOLICA: Correct.

21 CHAIRMAN PERATA: I remember 1984. It wasn't all
22 that great of a year. So, you might keep that in mind.

23 [Laughter.]

24 MR. CATTOLICA: Well, I'll say that gas was
25 cheaper, and a lot of other things were easier to do.

26 CHAIRMAN PERATA: And you were just starting in
27 your career. That was 25 years ago.

28 MR. CATTOLICA: That's right.

1 CHAIRMAN PERATA: Thank you. I appreciate that.

2 MR. CATTOLICA: Thank you.

3 MS. BORG: Good afternoon. My name is Sue Borg.
4 I'm the President of the California Applicants Attorneys
5 Association.

6 I'd like to reiterate the comments of the
7 previous speakers about Ms. Nevans' ability to reach out and
8 work with the community, because we've benefitted from that as
9 well, and we're certainly very appreciative of that.

10 However, our concerns, and we have grave
11 concerns, are with not what Ms. Nevans has tried to accomplish,
12 but what she has failed to accomplish.

13 And as the appointee of this administration,
14 there has been a pattern of delay and obfuscation that has made
15 this issue of the permanent disability rating schedule one that
16 is just a dire emergency for those who are permanently injured
17 on the job.

18 It was only, you will recall, about a month ago
19 that this Committee advised at the confirmation hearing of John
20 Duncan that -- that serious action was required in releasing at
21 long last the proposed new regulations on permanent disability.
22 It was only then, when under the gun, that they released what we
23 consider to be almost an insulting minimal increase.

24 We have several injured workers here with us
25 today who can demonstrate that those -- that that proposed
26 regulation, while it increases in one part of the rating, takes
27 away in other parts of the rating, and in all, we are left with
28 people who are at the bottom of all 50 states in terms of the

1 compensation that they receive for injuries that take place on
2 the job.

3 It's an intolerable situation, and as a result
4 and because of the fact that public hearings are scheduled in
5 just the next few weeks, we feel that it is premature at this
6 time to confirm Ms. Nevans until we see the outcome of those
7 hearings and the final proposed regulations.

8 I also want to point out, as was noted by
9 Mr. Cattolica, we have some serious concerns about the
10 implementation of the EAMS program, which is now starting.
11 There have been many warning lights and concerns expressed by
12 the community as well as by outside consultants about the speed
13 with which the DWC is proceeding to go live with this system.

14 We're concerned that there are not enough
15 contingency plans for what would happen if the system doesn't
16 work right. We're concerned that positions remain unfilled,
17 and the Division is unable to do the work that's involved, the
18 increased workload which is involved in implementing this
19 system, which was designed to be paperless, but actually
20 requires more paper from external users for the foreseeable
21 future.

22 And of course, with the log jam, with delays,
23 with problems with this system, it causes delays that will fall
24 upon injured workers disproportionately compared with the rest
25 of the community. And again, we would like to see that whatever
26 precautions are necessary in implementing this program, that
27 they're done, and that injured workers are not once again put at
28 the bottom of the list of concerns for this Division of Workers'

1 Compensation.

2 So, thank you.

3 CHAIRMAN PERATA: You're welcome.

4 MS. ATCHERLEY: Good afternoon, Senator Perata.
5 My name Linda Atcherley. I'm with the California Applicants
6 Attorneys Association, immediate past president, current
7 legislative chair.

8 I have -- I just want to introduce a couple of
9 injured workers that will illustrate both the cuts from the old
10 schedule and really the effect of what the new schedule will
11 mean to -- in offsetting the cuts that are here.

12 So, the first person -- and then for technical
13 questions, if you really want to know how I arrived at the
14 problems, I'll -- I'm here to answer those questions.

15 Effectively, both these people received pretty
16 much the maximum increase. They went to the highest ranking you
17 can get under the new schedule, with the increase factor of 1.5;
18 it resulted in a one percent increase overall in their total
19 disability. They're both -- one 49, one is 42, and they are
20 both impacted by the age changes in that schedule as well,
21 adversely impacted, that any increase they would have gotten
22 under the old schedule, they now get none under the new
23 schedule.

24 The first person is Patricia Mendoza, who was a
25 California Corrections officer.

26 CHAIRMAN PERATA: Welcome.

27 MS. MENDOZA: Hello. My name is Patricia
28 Mendoza, and I worked for the Department of Corrections as a

1 correctional officer for 20 years.

2 During the course of my duty, my lower back was
3 injured lifting -- while lifting prisoner restraints.

4 I've had nerve damage, bulging disks, bone spurs,
5 a lot of different problems with my back. It'll never be the
6 same.

7 I've lost my career because I can no longer be a
8 correctional officer. This has caused nothing but a financial
9 devastation for me, and no retraining has been recommended for
10 me at all, so I'm just kind of lost in limbo here.

11 Under the 2004 schedule, I would have been
12 entitled to 33,000 but under the 2005 schedule, where I was
13 rated, it went down to 6,000. And under the proposed schedule
14 that's up right now, it's like a 1,000 increase.

15 It's -- I don't know. I'm sorry.

16 Billions of dollars are spent everyday on health
17 care reform for the prisoners, but yet injured officers like
18 myself, we can't receive adequate benefits.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MS. BORG: The next witness is Gary Hoag, who was
22 a California Highway Patrol officer injured during the course of
23 his duties.

24 MR. HOAG: Thank you very much for allowing me
25 this time.

26 On January 10th, 2005, my career ended. I served
27 24 years with the Highway Patrol.

28 I was investigating an accident on I-5 by the San

1 Onofre power plant near San Clemente in the center median.
2 There was one previous accident there. And while I was
3 investigating that, an errant driver spun out of control into
4 the median and crushed my body between two vehicles.

5 As a result of that impact, luckily a witness
6 came to my aid, put a tourniquet on my left leg because it was
7 severed. It had one tendon holding it on. All the arteries,
8 all the bones were just blown apart and the leg was hanging. My
9 entire body was crushed.

10 They transported me to the Mission Trauma Center,
11 where for the next eight months I underwent six different
12 surgeries, orthopedic, plastic surgery, vascular surgery, and
13 reconstructive surgery, and spinal surgery. I had two spinal
14 fusions. I have one more spinal fusion pending.

15 As a result of all those injuries, my career
16 has -- my career has ended.

17 The reason I'm here is, under the old system, and
18 according to the new proposal, I've been diagnosed by the agreed
19 upon medical examiner and independent medical examinations by
20 the state not only as being permanently disabled, but
21 substantially incapacitated from performing a job as a
22 California Highway patrolman.

23 My injury has a greater degree of rehabilitation
24 because they decided to reattach the leg surgically versus
25 amputation, and therefore ongoing treatment is necessary and has
26 been prescribed by the primary treating physician and other --
27 other medical examiners. As a result of that, I have gone
28 through Orthotics Department, a prosthetic company. I have to

1 wear orthotic devices for the rest of my life. I will never
2 walk properly.

3 And under the old system versus the new scheduled
4 proposal, the difference will come out to approximately \$100,000
5 less.

6 Thank you.

7 CHAIRMAN PERATA: Ms. Nevans, while aggregate
8 data is understandable, I'm much more concerned about exceptions
9 to the data like this.

10 You've got two people now who have basically had
11 public careers in high-risk occupations, and frankly it's
12 embarrassing. It's embarrassing for us as a state to reward
13 that kind of service with that kind of a situation.

14 I'm not asking you to answer it. I'm just saying
15 that as one guy, that's what I'm looking at.

16 Thank you, sir.

17 MR. HOAG: Yes, sir.

18 CHAIRMAN PERATA: Next.

19 MR. CENICEROS: Thank you. My name is Jesse
20 Cenicerros. I'm currently the President of Voters Injured at
21 Work, a nonprofit organization that represents approximately
22 5,000 injured workers across the state.

23 Today I would like to address the Committee in
24 regards to the confirmation of Carrie Nevans and the influential
25 role that she has played with Voters Injured at Work.

26 Carrie Nevans has done something unprecedented
27 with the workers' comp system, which was to include Voters
28 Injured at Work to be a participant in the political process of

1 workers' compensation.

2 Injured workers previously have had to rely on
3 labor and California Applicants Attorneys to be the voice of
4 injured workers. And for this, we remain extremely
5 appreciative. She has always had an open door policy for Voters
6 Injured at Work.

7 In that there are still many problems facing
8 injured workers that must be addressed, one of which includes
9 the permanent disability rating which is hurting every injured
10 worker in the State of California, something must be done with
11 some urgency to protect injured workers' rights to fair and
12 adequate compensation guaranteed by the Constitution of
13 California.

14 In closing, although we extend our thanks to
15 Carrie Nevans for all that she has done for us, the position of
16 Voters Injured at Work is, we'll remain neutral with concerns,
17 asking that her confirmation be delayed until the Governor
18 raises permanent disability benefits, or otherwise addresses the
19 unfairness addressing injured workers across the state.

20 Thank you.

21 CHAIRMAN PERATA: Thank you, sir.

22 MS. BOUMA: Mr. Chair, Members of the Committee,
23 I'm Christy Bouma, representing the California Professional
24 Firefighters.

25 We, too, have experienced a very positive
26 relationship with Ms. Nevans, invited to many advisory
27 processes.

28 But unfortunately, I'm here to ask you to reflect

1 the actions of the Division on the issue of PD and others, which
2 is to take no action until we see some results, as the previous
3 speakers have mentioned, because as I represent firefighters,
4 it's imminent that we get injured on the job, not a possibility.
5 And to have these kinds of impacts on our personal lives when
6 we're injured and cannot return to the job is devastating to
7 their families, and their career ends.

8 And so, something that you can do is maybe to
9 motivate the administration to give Ms. Nevans the green light
10 to actually remedy this problem for the workers in California.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. BROYLES: Good afternoon, Mr. Chairman and
14 Senators, Julianne Broyles here on behalf of the California
15 Association of Joint Powers Authorities.

16 Certainly you've heard a lot today about how hard
17 Ms. Nevans works at inclusion. And from our experience, it is
18 that same experience, that she has always worked to make sure
19 that she looks at all parts of a problem before crafting a
20 solution.

21 I know that from our experience, the permanent
22 disability rating system is one of the most complex systems,
23 with so many different areas of information to be examined and
24 evaluated with good data and bad data, looking to see are you
25 getting the correct information or the incorrect information in
26 order to create the best conclusion?

27 The process that's going on now with the hearings
28 that are coming up in mid-July is one where she's going to get

1 even more information to make sure that the decision that's been
2 made to raise benefits by 16 percent, and there'll be people
3 there, I'm sure, that will be saying that the increase is much
4 more than that, there'll be folks who are saying that the
5 increase is much less than what is on paper.

6 But at the end of the day, I believe that the
7 fairness that Ms. Nevans has always tried to apply to the
8 system, to the PDRS system, and to her job will come forward.

9 And I do think she deserves the confirmation so
10 she can continue that job and complete the work that she began
11 in the wake of the 2004 reforms.

12 CHAIRMAN PERATA: Thank you.

13 MS. LEON: Cynthia Leon with the California
14 Manufacturers and Technology Association in support of
15 Ms. Nevans' appointment today and confirmation.

16 We have seen her work over the last three years
17 very diligently to obviously bring all the stakeholders to the
18 table. You'll hear consistently from everybody that she has
19 been very responsive, that she's been open.

20 I think it also is reflected in the work she's
21 done on return to work. It's a good example of a very
22 complicated system that she has tried to encourage everybody to
23 sit down, look at -- look at the program, and basically turn it
24 upside down if necessary. It shows her true and genuine
25 interest in making sure that the system works for everybody, and
26 her commitment to making sure that all injured workers are
27 getting the best treatment that they need.

28 We're very pleased with her work, and we think

1 that it is necessary for the Committee to confirm her today in
2 order for her to continue the work that she's doing for the
3 system as a whole.

4 CHAIRMAN PERATA: Thank you.

5 MR. LIPTON: Mr. Chair, Members of the Committee,
6 Scott Lipton on behalf of the California Coalition on Workers'
7 Compensation.

8 Behalf of our public, private, and not-for-profit
9 members, we strongly support the confirmation of Ms. Nevans
10 today.

11 As previous speakers behind me have said,
12 including those who have asked for a delay in her confirmation,
13 unfortunately, Ms. Nevans has been the picture-perfect of
14 inclusion in all processes when it comes to the Division Of
15 Workers' Compensation. Her mantra and her policy has always
16 been to not just include labor and management, or labor and
17 employers, but all of the stakeholders involved in the system
18 and really drive towards consensus.

19 Case in point, a very lengthy and deliberate
20 return to work advisory committee process that, we hope, very
21 shortly will result in some significant legislation revolving
22 around the issue of the supplement job displacement benefit and
23 return to work, but also a commitment to continuing those
24 discussions, so hopefully we get an even bigger and better
25 product as we move forward to the legislative session next year.

26 Ms. Nevans, in all fairness, has not always --
27 her regulations, her processes, the employer community hasn't
28 always 100 percent agreed with, much like when she has

1 instituted regulations that other parties have concerns with.

2 But the point here is that she's always done
3 everything with the interest of the efficiency and equality in
4 mind in her processes, in her procedures and as the
5 Administrative Director, and we strongly support her
6 confirmation and ask for you to confirm her today.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MR. SCHMELZER: Thank you, Mr. Chair and Members.
10 My name is Jason Schmelzer. I'm with the California Chamber of
11 Commerce.

12 We've heard a lot today pretty much from
13 everybody that Carrie's conducted her -- her position in a way
14 that includes everybody, creates a very open process.

15 I noticed one other thing that I suppose I can
16 wrap this up with. On top of that, I think that process and
17 that openness has led to a closer relationship between all of
18 the stakeholders even outside of those processes. It's led to
19 us sitting down last year and coming up with compromise
20 legislation on temporary disability. It's bearing fruit in
21 return to work this year.

22 I don't know that those relationships would have
23 occurred in a positive light as they have if it wasn't for her
24 leadership and her setting the example at the DWC.

25 So, we support her confirmation. We think that
26 she's been great for all parties, and we'd hope that you ought
27 to confirm her today.

28 CHAIRMAN PERATA: Thank you.

1 MS. CONEFF: Hi. I'm Marygrace Coneff, and I'm a
2 Board Member with Voters Injured at Work.

3 I was injured in 2000, and I'm still part of that
4 ongoing process, which is rather unfortunate.

5 But in the process of all that, I'm one of the
6 pre-SB 899 people, and have really gotten shafted by even having
7 that special ability to, you know, get the different rating.

8 I was a social worker with the Department of
9 Children's Services in San Bernardino County. And we tried
10 working with the County to try and, you know, change things and
11 get things done. And I eventually became involved with Voters
12 Injured at Work.

13 It's not easy, the job that you have, Carrie.
14 There's been times when she's responded to some of my e-mails at
15 11:30 on Friday nights. Susan Guard has done the same thing, so
16 has Mr. Angelides.

17 I think that the department is -- has really
18 changed under her leadership. There's still things to do.
19 There's always going to be changes that need to be made.

20 But I have to say that I've never met somebody
21 who involves everybody, including the reason for the department,
22 which is injured workers. I mean, that's the whole reason that
23 there is such -- this big Division. And that seems to be the
24 bottom line for her, is the injured worker, as well as her
25 staff.

26 And being that I worked in the field of
27 government, I know how some people can, you know, just be up
28 there at the top and not really care. And I have to say that is

1 just not the case with Carrie.

2 She has a big job ahead of her, especially with
3 the legislation that was passed. It isn't easy, but I think
4 that she's -- she's done something that I just have never seen
5 done before. Everyone in her office is willing to talk to an
6 injured worker. And she's been willing to have us participate
7 in the process.

8 It took a bargaining unit discussion for us to be
9 able to have discussions with management at my job. That hasn't
10 been the case here.

11 So, I just wanted to say that I think she's
12 leading with courage, compassion, and true caring. And that for
13 her to allow injured workers to be a part of this process is
14 just absolutely commendable.

15 CHAIRMAN PERATA: Thank you.

16 Anyone further? Anyone in opposition?

17 Any questions?

18 Well, my instincts tell me that left to your own
19 devices, you're a damn good administrator. I think the last
20 comment, that it usually takes a collective bargaining agreement
21 to get management to talk is telling. You probably don't have
22 too many luncheons with a lot of different managers, I bet.

23 But I know that the decision you're making ahead,
24 while you're making it, it is above your pay grade. So, the
25 best we can hope for is the best you can do.

26 But I do think that as you build your decision,
27 and document the reasons why you do it, that will become a prima
28 facie case for why this has to be done. Hopefully, it will be

1 far in excess of what we see here. But in all events, you know,
2 what you do will be justified by the way in which you arrived at
3 your decision.

4 And if that decision is promulgated, if that
5 stuff's out there, then it becomes very hard for somebody else
6 to politically massage it. And I understand probably better
7 than anybody how politics works, and I understand this
8 administration probably better than most.

9 But this decision should not be in the free-fire
10 zone. I shouldn't have to kill you in order to kill somebody
11 behind you.

12 And you have a lot of people with a lot of
13 confidence in you. And I believe that, again, your true spirit
14 and commitment has come through in the way you've conducted your
15 office and the way you've treated people.

16 I can only hope that others will allow you to
17 extend that. If you've be good enough to do the job that you've
18 been doing for the last two-and-a-half to three years, you ought
19 to be able to make this decision, and we all ought to live by
20 it.

21 So with that, I am going to hold you over. I
22 want to see a little bit more what happens.

23 I appreciate your forthrightness. I congratulate
24 you for the courage of bringing your family here --

25 [Laughter.]

26 CHAIRMAN PERATA: -- and for things that have
27 been said about you today.

28 We've done a lot of hearings in the area of labor

1 and management, we haven't heard the same things. I mean,
2 generally this administration has not gotten high marks for the
3 way it treats working people, but you are the exception to the
4 rule.

5 I hope I just didn't damn you by saying that.

6 You have a tough couple of months ahead, I know.
7 So, we'll look forward to you mastering that responsibility and
8 administering as you have, and arriving at a decision that we
9 can all be proud of.

10 So, thank you very much.

11 MS. NEVANS: Thank you.

12 CHAIRMAN PERATA: We're going to give the
13 fingers a little break.

14 [Thereupon a brief recess
15 was taken.]

16 CHAIRMAN PERATA: We're going to reconvene.

17 All right, next is Alan Welsh, Division of
18 Occupational Safety and Health.

19 Chief, welcome.

20 MR. WELSH: Thank you.

21 I would like to introduce a couple members of my
22 family. Masako Mizoguchi, Carol Welsh, Grant Huberty her
23 husband, and long-time family friend Aram Attarian, right there.

24 There are number of staff and friends here who
25 kind of feel like family, but I guess I won't introduce them.

26 CHAIRMAN PERATA: Let's see how this goes.

27 [Laughter.]

28 MR. WELSH: Maybe I'll need to later.

1 Well, thank you, Chairman Perata and Committee
2 Members, for allowing me to come here and seek your vote for
3 confirmation.

4 As you know, I've been with Cal/OSHA for a long
5 time. I started in 1981 as a graduate student assistant, and in
6 the 27 years that followed, I've been there for about 20. And
7 I've seen the agency grow quite a bit.

8 When I first came there, I was attracted to it
9 because it already had a reputation for being an agent of change
10 and for being a national leader. And I saw that as something I
11 wanted to be a part of.

12 During the period 1981 to about the year 2000, we
13 saw things like Right to Know and Hazard Communication come into
14 being. We saw a regulation of asbestos contractors so that they
15 had to get registrations in order to do the work. We saw the
16 passage SB 198, that brought the Injury and Illness Prevention
17 Program requirement into being, processed safety management for
18 refineries and large users of chemicals, a high hazard program
19 that target employers that basically were the most likely to
20 have places of employment with serious injuries and fatalities.

21 So, I saw the agency grow and change quite a bit,
22 and I was a part of a lot of those things. I certainly don't
23 take credit for any of them, but it was quite a privilege to
24 be -- to be part of that, and to learn as much as I did about
25 the things we can do to protect workers, and new ways to go
26 about doing that.

27 And I have to say, having heard those witnesses
28 earlier today, there is nothing more disturbing to me to hear

1 about an accident that could have been prevented. And every
2 time I hear of one of those things, it feels in some way like
3 I've failed.

4 And I don't mean to be overly dramatic, but
5 that's what you go through when you're an agency that
6 specifically exists to prevent the kind of claims that
7 Ms. Nevans' agency has to deal with.

8 Up to about 2000, I had been in more of a policy
9 advisor and legal advisor position for the agency. I switched
10 over to being an administrator, and certainly we've continued in
11 that time to be doing things that -- that do represent change
12 for the most part, while the rest of the nation watches.

13 But my role has been more one of trying to make
14 the reality happen. All of those initiatives sound good --
15 hazard communication, regulating cranes to make them safe, that
16 kind of thing -- but to actually make it happen is a very
17 different thing. And that's what I've been taken up with really
18 for the last eight years, and particularly the year since I was
19 appointed acting Chief.

20 And one thing I've come to realize in that role
21 is that it really helps when, first of all, when you have
22 requirements that are a product of consensus. We can't always
23 make that happen, but the fact is that most of the time when we
24 develop regulations, we develop policies, we can get consensus.
25 There is a middle ground. There is kind of a middle class of
26 employers, if you will, that -- that do want to do the right
27 thing.

28 And if you can -- if you can sort of wrap your

1 hands around that sort of common sense mentality that says, yes,
2 we do need to level the playing field for employers who comply;
3 yes, we do need to penetrate those areas where the agency hasn't
4 reached, like the underground economy, like workers who don't
5 speak English, those are things that we need to do to actually
6 make the agency have an impact.

7 So I, for one, have become someone who tries as
8 hard as I can to get consensus behind the initiatives we -- we
9 push forward. More often than not we get it. It doesn't mean
10 when we don't get consensus that we won't make hard decisions,
11 but most of the time we can, and that's because if there's good
12 communication, if people are willing to listen to each other's
13 point of view, and there's an attitude that we're going to solve
14 problems, usually we can get consensus.

15 One example of that is the program that we have
16 now to address the artificial butter flavoring diacetyl, and the
17 debilitating lung disease it causes. We are essentially
18 regulating 28 flavor manufacturings in the state now through a
19 voluntary compliance program. They are putting in all the
20 changes that we hope soon to address with an Occupational Safety
21 and Health standard that would make these things requirements.
22 But the fact is that by working with them and bringing together
23 different government agencies to assist with different issues,
24 working with industry associations, we have been able to get
25 them, for the most part, to do everything we want them to do.
26 And I think that's an example of what we need to do more of.

27 We need to always be thinking about compliance.
28 And most people -- I don't know most -- a lot of people sort of

1 think interchangeably about compliance and enforcement.
2 Enforcement is a way to bring about compliance. It's always
3 going to be indispensable to bring about compliance, but it
4 doesn't always do that unless you actually make people get the
5 job done. There are different ways to do that. We have a
6 consultative branch that does that. We work with partnerships.
7 We have enforcement. We have sweeps.

8 And the trick, I think, is to put all those
9 things together so that the incentives really are for employers
10 to -- to comply with safety practices and to get the job done.

11 So with that, I'll be happy to answer any
12 questions you have.

13 CHAIRMAN PERATA: You were acting for a long
14 time. They weren't sure of you? What was the deal there?

15 [Laughter.]

16 MR. WELSH: I don't know what the deal was,
17 Senator.

18 I feel that I got support for the things I needed
19 to do.

20 CHAIRMAN PERATA: They didn't like just forget
21 you?

22 MR. WELSH: Well, sometimes we joke that, you
23 know, you only find -- you only get attention when you're doing
24 something bad. And if you're doing good, sometimes you don't
25 hear a lot.

26 But I have gotten support every step of the way.

27 CHAIRMAN PERATA: That's a great way of looking
28 at life. I'll remember that.

1 I was just wondering. We don't see much of that,
2 and that they eventually give you the real job. So,
3 congratulations.

4 MR. WELSH: Thank you.

5 CHAIRMAN PERATA: One other thing I was wondering
6 about is, you talked about establishing the heat illness
7 standard, and that the issue was petitioned unsuccessfully for
8 20 years.

9 Would you give me a hint why it took so damn
10 long, and why somebody had to die?

11 MR. WELSH: Senator, people were dying the whole
12 time. It wasn't that somebody had to die.

13 I do think that we were hearing less about it
14 during the '80s and the '90s. It was still happening.

15 We approached it globally, as we did ergonomics,
16 by the way, in the '90s. We sort of wanted to wrap everybody
17 into one standard, and that might have been part of the problem.
18 Sometimes it's harder to do a one-size-fits-all, and it's better
19 to sort of the think, you know, where is the problem most
20 extreme? Start there, because again, if you can get consensus,
21 that's gold.

22 And we were able to do that in 2005. We
23 basically had consensus. I mean, there were criticisms. Some
24 people wanted us to go further; some people wanted us not to go
25 so far. But there was a common core of consensus that we -- we
26 actually had to do something.

27 So, we focused on outdoor work where the problem
28 was most severe, and particularly agriculture. And I think that

1 helped, along with the Governor's support, to break the log jam.

2 CHAIRMAN PERATA: Thank you.

3 Any questions? Senator Padilla.

4 SENATOR PADILLA: Questions in two areas.

5 I know we're talking about this incident, but I
6 think it's a good example and possibly telling of policy making,
7 enforcement issues, and leadership that your position calls for,
8 the death in the fields from 2006, the recent death in the field
9 that should have been avoided if proper implementation and
10 oversight of the 2006 rules and regulations were in place.

11 The rules in 2006, and the participation and
12 support of the Governor, made it as high profile as it could
13 possibly get. There's a lot of the rule making that takes place
14 in this town without that fanfare and without that involvement
15 of the Governor.

16 If something that has his face on it isn't
17 followed through on to avoid situations like we've seen just
18 recently, we're only left to wonder what type of commitment,
19 sense of urgency and follow-through there is on everything
20 else.

21 So, explain to me how this is either an exception
22 to the rule, or if it's a common occurrence, how that's going to
23 change going forward?

24 MR. WELSH: Well, we actually adopted the
25 emergency standard in 2005. And we did -- as we adopted the
26 standard, we did something that has not be often done in the
27 history of the agency. And that is that we didn't just walk
28 away from what we considered to be a successful adoption.

1 Actually in 2005, it was an emergency standard. We came back in
2 '06 and adopted the permanent standard.

3 We didn't just walk away from that and consider
4 it a victory. In '05, when we adopted the emergency standard,
5 we started turning extra attention to agriculture again, in
6 particular to try to get compliance with that standard.

7 And, Senator, this is an area that has not well
8 been explored anywhere in the country as far as I can tell. You
9 know, exactly how do you measure the true impact on compliance
10 and on worker safety and health by adopting a standard and
11 having an enforcement structure like OSHA to try to make it
12 happen?

13 We, for the most part, measure things like how
14 many citations we issue, what are the penalties, how long does
15 the inspection take.

16 But making studies that are more aimed at, you
17 know, did we get compliance? Did we actually change safety
18 culture? Did we lower injuries and illnesses? Those studies
19 really haven't been done, and we're starting to do that.

20 I think that's one of the urgent things we have
21 to do, not only in this state but nationally.

22 But to get to your -- back to your question, we
23 did implement an unprecedented effort to try to actually deliver
24 the message of that standard to one of the most difficult to
25 penetrate industries there are, which is agriculture.

26 We've done studies ever since we began that
27 initiative in '05, to see what kinds of things people were out
28 of compliance with. And that is, what provisions in the

1 standard people are out of compliance with when we did
2 inspections and found that they were out of compliance, and
3 which of those types of noncompliance seemed to be most
4 implicated in causing an injury or death.

5 So we have been -- you know, we have been
6 confronting the issue of how do we actually make people do this,
7 now that we've come up with a requirement that, you know, says
8 you've got to do it. And I have to tell you, it's a tough nut
9 to crack.

10 We have ramped up continually from '05. I think
11 the effort we have made to bring word of this to the fields is
12 unprecedented.

13 We still haven't found the right formula, I can
14 tell you that. We certainly can improve.

15 SENATOR PADILLA: Well, obviously it's critical
16 because it's fundamental to why we have these rules in place to
17 begin with.

18 And let me offer part of the answer, I think, and
19 as a segue to another issue.

20 I have before me a chart provided to Members of
21 the Committee for Department of Industrial Relations, Division
22 of Occupational Safety and Health, Penalties and Collections for
23 last five years. Let me just cite a couple of numbers.

24 In year 2003, penalties assessed prior to the
25 appeal process that's in place added up to \$34,417,280.

26 Now what a lot of people aren't aware of is just
27 because a penalty is assessed, there is an opportunity both for
28 a penalty reduction as well as a negotiation piece after that

1 for further reduction. So then there's the actual dollars
2 collected piece.

3 So in this year of 2003, where the department
4 assessed more than \$34,400,000 dollars, actual collections that
5 year added up to only \$13,593,611.

6 Fast forward to last year, 2007, penalties
7 assessed, 35,657,932. Between the penalty reductions and you
8 end up getting to the collection stage, the collection figure:
9 6,613,570.

10 So, this MIT guy's doing the math again. Over
11 the last five years, we're talking about nearly \$50 million left
12 on the table between the penalty reductions and the weak
13 collection; \$50 million dollars that could very well be going
14 into enforcement.

15 Not only that, but as someone who breaks the
16 rules here, knowing that if the penalty is just a penalty, I'm
17 going to basically count on a reduction, and then maybe not even
18 pay what the reduced level is, and there's no consequences.

19 Not too long ago in this Committee, we were
20 dealing with HMOs who, when they're assessed penalties for
21 violations, they pay and get that dollar amount credited toward
22 their annual fees.

23 So, we're losing the teeth here. We're losing
24 the true accountability piece here. And clearly, it directly
25 ties back to your ability to enforce the law.

26 MR. WELSH: There are a couple issues I would
27 like to try to clarify.

28 First of all, the trend you pointed to from '03

1 to '07 in the data you're looking at do not reflect a reduction
2 in our ability to collect.

3 What they reflect is that we have not finished
4 the process. And that's in part due to another phenomenon I
5 really don't control; that's the appeals backlog. Our cases now
6 are averaging about two years from essentially filing of the
7 appeal to resolution of the appeal. So, they sit in limbo for
8 about two years. And that's an issue that our appeals board has
9 been tackling.

10 We've been trying to work with them on that, to
11 reduce that -- that length of time, but we basically got -- we
12 started to develop a significant backlog around the turn of the
13 century. Some people think that was due to AB 1127, raising the
14 penalties. But whatever the reason, it takes longer now to get
15 from the point where we issue a citation to the point where that
16 citation becomes an enforceable bill to pay the penalty.

17 SENATOR PADILLA: Let me just ask you to pause
18 for just a second.

19 In 2004, penalties assessed, nearly 33 million;
20 dollars collected, 12.3. In 2005, penalties assessed, nearly 32
21 million; dollars collected, barely over 11.

22 MR. WELSH: That's because we haven't finished
23 the process.

24 SENATOR PADILLA: That's more than two years ago,
25 and we're already in a trend in the wrong direction.

26 Continue.

27 MR. WELSH: Well, what I'm telling you, Senator,
28 is that the '03 data are complete. That -- those '03 data

1 represent probably everything we're going to collect on what was
2 issued.

3 The '04 through '05 through '06 through '07, you
4 see a descending trend in how much we've actually collected
5 because those cases are still in progress. We're still
6 collecting on those cases. And I think we'll get essentially
7 the same ratios.

8 But, you know, even if you look at the '03 data,
9 I'm not happy with that. We're getting about 50 cents on the
10 dollar, which is too little, I agree with that.

11 We have taken some steps to address that. First
12 of all, we do have to reduce the backlog, and that's just part
13 of it. The two years to complete an appeal is only part of that
14 process. There's doing the inspection, and there's collection
15 activity after there's a final order of the board. And there
16 are appeals beyond the board as well. There's reconsideration
17 and going to court. So, these other things come into play, and
18 litigation can take a very long time.

19 SENATOR PADILLA: For the benefit of the
20 Committee, can you talk to us about what the penalty reduction
21 encompasses before you even get to the appeal process?

22 MR. WELSH: Sure.

23 We -- obviously when we issue a citation, an
24 employer is entitled to appeal the citation to the Appeals
25 Board, and we lose -- I think those data show we lose about 66
26 percent of what we assessed or what we proposed. The Appeals
27 Board doesn't believe that we propose -- we assess penalties.
28 The Appeals Board believes we propose them. That's what their

1 case law says.

2 And I think we're averaging about a 66 percent,
3 sometimes it's closer to 50 percent, but for the most part, 66
4 percent reduction going from citation issue to -- being issued
5 to completion of the appeals process, and that turning into a
6 billable fine.

7 So, that's -- that's where most of the loss is
8 coming from. And that loss is going to be bigger if the appeals
9 backlog is such that it takes longer for us to get through the
10 appeal. A lot can happen in two years' time. I mean, witnesses
11 go away; memories dim. And so, that's part of the problem.

12 If we can get the -- the appeals length down to
13 the national average, which I think is about eight months --

14 SENATOR PADILLA: So are there some fixes that
15 you've pursued? To start with, specific language change where
16 your assessments are actual assessments, not recommendations to
17 the board as you've described?

18 MR. WELSH: Well, I -- that would take
19 legislation.

20 SENATOR PADILLA: But is that something you've
21 pursued?

22 MR. WELSH: I haven't personally pursued
23 legislation for that, no.

24 There is about -- we're losing a lot in
25 collections that we shouldn't be losing. I've turned my
26 attention to that, with the help of John Duncan at DIR. Our
27 collections process is not all that efficient, and that
28 historically has been a problem with the agency ever since I

1 started in '81. So, we are losing a certain amount of money
2 from collections.

3 There's another issue, and this is something that
4 reasonable minds can differ on. Some of the Appeals Board
5 people feel that our -- the reason for the 60 percent reduction
6 is poor work product. And frankly in some cases, it is.

7 There are other people who feel that some of the
8 rules the board follows are, you know, not all that friendly
9 toward affirming a violation. And so, it is a litigation
10 process.

11 I do think that we can produce a better
12 enforcement product. I have personally committed to train all
13 of my staff personally, you know, have training sessions for all
14 my staff the coming year, and I'll appear at those sessions
15 because I think there are several things we're not doing as well
16 as we could in terms of standardizing our enforcement approach.

17 Beyond collecting the money, I mean, the bottom
18 line is getting abatement. And one can ask that question, too.
19 Okay, if the money's being paid, does that necessarily mean the
20 employer's fixing the problem? The answer is no, it doesn't
21 necessarily mean that at all. It means the employer is paying a
22 bill.

23 The bottom line is, are we using the enforcement
24 process to make employers fix the problem? And we need to do
25 more work in that area. That, to me, is actually more important
26 than collecting the money.

27 SENATOR PADILLA: I'd like to work with you on
28 that, both of those items.

1 Thank you.

2 CHAIRMAN PERATA: Just following up on that, why
3 is there such a discrepancy between a fine affixed and a fine
4 collected?

5 I mean, you get a speeding ticket and you don't
6 pay it, you're going to get popped. It just seems like a pretty
7 flagrant abuse.

8 Do you know why? Is it because they don't figure
9 you're going to get them?

10 MR. WELSH: Well, some of the -- I need to sort
11 of ask you which part of this you're talking about, the
12 reduction the Appeals Board does, or the failure to collect some
13 of that money after it becomes a billable.

14 CHAIRMAN PERATA: Yes.

15 MR. WELSH: That part.

16 You know, I will say this. Local communities
17 have an incentive to collect the money because they get to use
18 the money they collect.

19 We don't. We turn the money over to the General
20 Fund. And of course, one can always argue that that money
21 should come back to Cal/OSHA somehow, but it doesn't
22 necessarily.

23 So, my guess is that historically --

24 CHAIRMAN PERATA: The Governor will steal it.

25 [Laughter.]

26 MR. WELSH: Everybody's after it. There's not
27 enough of it to go around right now.

28 But I think part of the problem is that the

1 people who do the collections don't really feel that they
2 have -- historically haven't felt like there's anything in it
3 for them. I mean, they just -- there hasn't --

4 CHAIRMAN PERATA: We are paying these people, or
5 are they bounty hunters?

6 MR. WELSH: They're on salary. They work in
7 accounting.

8 CHAIRMAN PERATA: So, one might be able to argue
9 that you're on salary, you're paying it, and that's why you
10 should do it. It's a novel thought.

11 MR. WELSH: One could argue that.

12 One has to basically let them know that they're
13 being supervised, and let them know that their job performance
14 is going to be based on how well they do compared to, you know,
15 how well they should be doing. And that's what we're in the
16 middle of doing right now.

17 CHAIRMAN PERATA: This is Angela Bradstreet? How
18 do you and she --

19 MR. WELSH: You're talking about the Labor
20 Commissioner, Angela Bradstreet.

21 CHAIRMAN PERATA: Yes.

22 MR. WELSH: We only work together in the
23 following way on collections.

24 They actually -- part of their collections
25 process -- I know they've had some criticisms, too -- but part
26 of their process works well, the part of it where their own
27 attorney gets involved in the collection effort. And we've
28 actually met with that attorney and decided to emulate that part

1 of the process for where it fits into ours.

2 We also historically have just referred cases to
3 a collection agency. Now we're using an attorney to essentially
4 get the judgment from court, and we've just made -- done an MOU
5 with the Franchise Tax Board, which tends not to take prisoners,
6 to do the collections work for us. So, we think we'll get --

7 CHAIRMAN PERATA: That's not necessarily true.
8 You get whatever that dog is on TV, maybe.

9 We are criticized frequently that collections,
10 in-house collections of government, are in efficient and
11 nonproficient, for pretty much the reasons that you've just
12 said, and it would come down to bad management or bad
13 supervision. If somebody's got a job, it gives us all a bad
14 name.

15 So, I'd really encourage you to look at that,
16 because it might be chump change, 30-40 million dollars, but for
17 somebody it's a lot of money. And I believe a lot of things,
18 unless there is a collective bargaining agreement that says,
19 unless there's some super reason for doing something, you ought
20 to just do your damn job.

21 I think that it's got to be you leaning on them.
22 I'm a great believer in the essential function of government
23 being done by government employees, but this isn't one of those
24 areas. And if somebody can go out there and guarantee you 75 or
25 80 cents on the dollar, pretty colleagues on both sides.

26 I've got colleagues on both sides. The
27 Republican guys are all over you, saying that it can be done.
28 Talk to McClintock if you want to have a really good time.

1 He'll cite chapter and verse when the Founding Fathers said, "We
2 should have collection agencies."

3 But it's something that, now that you're going to
4 pretty quickly have a real job here -- you're not going to be an
5 acting kind of guy; you're going to be the real deal -- this
6 will be something for you to look at.

7 You sound like you get the problem.

8 MR. WELSH: I do.

9 CHAIRMAN PERATA: You frown every once in a
10 while, and you'd be surprised.

11 Do you remember what Capone said? "You get a lot
12 more with a kind word and a gun than a kind word."

13 [Laughter.]

14 CHAIRMAN PERATA: Anyone here who would like to
15 come and speak in favor?

16 MS. BROYLES: Good afternoon, Senator Perata and
17 Members of the Committee. Julianne Broyles here on behalf of
18 two organizations: the California Association of Joint Powers
19 Authorities and also the California Grocery Manufacturers
20 Association, which is working on the diacetyl issue as we speak.

21 I can speak --

22 CHAIRMAN PERATA: Can I ask you, what is that
23 issue, whatever she just said? You mentioned it
24 earlier.

25 MS. BROYLES: Artificial butter.

26 CHAIRMAN PERATA: Yes.

27 MR. WELSH: What do you want to know about it?

28 CHAIRMAN PERATA: What is the issue?

1 MR. WELSH: Well, the issue is that it is an
2 artificial food flavoring that apparently is perfectly safe to
3 eat, but as is true with other chemicals, when you get it in an
4 industrial environment and are using it in large quantities and
5 high concentrations, it can be very hazardous to workers.

6 CHAIRMAN PERATA: Oh, I see.

7 MR. WELSH: It causes a disease called
8 bronchiolitis obliterans, which can lead to the need for a lung
9 transplant. It's not a -- it's not a trivial disease. It's
10 very serious.

11 CHAIRMAN PERATA: Thank you.

12 MS. BROYLES: I have had the opportunity and the
13 pleasure to work with Len since about 1986 on a number of
14 different issues, beginning with the issue of ergonomics, and
15 going all the way up to artificial butter flavorings today.

16 And I can say that it's been interesting watching
17 the development of his policy choice, which is to bring people
18 together in a consensus stance. It wasn't always the case, but
19 certainly is now, that he does try to find the focus of the
20 problem, to find consensus on ways to solve that problem in the
21 quickest and most efficient way possible.

22 I have been continually impressed by his ability
23 to always be available when people have concerns, they don't
24 understand something, why something is being proposed. He is
25 there with an explanation and the reasons behind it.

26 He is sure, has been one of the few regulators
27 that I've worked with who has always looked to the science to be
28 sure what they're -- what they're proposing to put in actually

1 has a basis in fact, so it's not going beyond what needs to be
2 fixed, but again, focuses in on the real problem.

3 He has been a terrific acting director of DOSH,
4 and I would hope that you would confirm him to continue that in
5 the full position.

6 CHAIRMAN PERATA: Thank you.

7 MS. WEI: Thank you, Mr. Chair and Members.
8 Angie Wei, California Labor Federation, in support of
9 Mr. Welsh's confirmation today.

10 It's sadly more unique that it's more the
11 exception than the rule where we actually have appointees who
12 have deep experience and a real commitment to the work that
13 they're doing, and I believe that Mr. Welsh does carry these
14 characteristics.

15 He has both training and educational background
16 to help in Cal/OSHA Health and Safety. And he's also had a
17 demonstrated commitment to worker health and safety, and that
18 has been -- continually come to our acknowledgement.

19 Very specifically, we've worked with Mr. Welsh on
20 the diacetyl issue, the outdoor heat regulation, silica dust,
21 and the PELs, the Permissible Exposure Limits of different
22 chemicals in the manufacturing process, and we've enjoyed that
23 experience.

24 We don't always get what we want, but that is the
25 nature of compromise and how things happen around here.

26 I do want to take a second to speak to Senator
27 Padilla's questions around the appeals process, staffing, the
28 lack of collections.

1 There is a real problem in our enforcement
2 agencies for worker health and safety and labor law protections.
3 And that is, we don't have the adequate resources to enforce the
4 laws that we have on our state statutes. It's the crux of our
5 budget crisis, in our opinion, which is: Do we have the revenue
6 and the funding sources to fund the important public services,
7 an important job that state government has today? Clearly, we
8 don't.

9 Today Cal/OSHA has a little over 200 inspectors
10 for the over 30 million workers that we have in the state. That
11 is -- we have fewer Cal/OSHA inspectors today than we have Fish
12 and Game inspectors.

13 CHAIRMAN PERATA: My God, that's pathetic.

14 MS. WEI: That's why we need new revenues to be
15 able to increase in the services that we need.

16 And we don't hold Mr. Welsh accountable for that.
17 And we don't want to belittle the importance of Fish and Game
18 inspectors, but we do need to get more inspectors and more
19 resources to Cal/OSHA to be able to enforce the laws.

20 On the appeals process, Senator Padilla's issue,
21 there is an incentive today under existing law for employers to
22 appeal the citations and penalties that they are assessed by
23 Cal/OSHA. And the incentive is that while you're appealing that
24 citation and those penalties, you need not abate most of the
25 workplace hazards. So, there's an incentive there for employers
26 to automatically appeal.

27 We have pending legislation moving through the
28 Legislature this year to address the problem and shift the

1 paradigm there, going to the Appeals Board, which is that you do
2 have to actually abate during the appeals process, but that
3 there's an expedited process to get out of the abatement while
4 you're appealing.

5 So, it is an important issue. We appreciate the
6 Senator raising it today. It is something that we are hopeful
7 that Mr. Welsh, in his capacity at Cal/OSHA, can help us get
8 that bill signed.

9 Finally, I would want to say on behalf of our
10 members, we invited Mr. Welsh come to our legislative conference
11 in April of this year. Folks, our business agents, our shop
12 stewards, I have to say, are not very happy all the time with
13 Cal/OSHA. They can call. Nobody may come. They may not get a
14 response.

15 Mr. Welsh took our invitation, came to the
16 legislative conference, and he took it from every one of our
17 shop stewards and business agents. And he's opened up a
18 dialogue now with rank and file union members and our union
19 staff, giving them an avenue, a clear path towards Cal/OSHA to
20 figure out how we can make our work sites safer. And for that,
21 we very much appreciate him taking it directly from our members.

22 We hope that you will confirm him today. Thank
23 you very much.

24 CHAIRMAN PERATA: Thank you.

25 MS. TREANOR: Good afternoon, Mr. Chairman,
26 Senators. Thank you for the opportunity to appear before you.

27 My name is Elizabeth Treanor. I'm Director of
28 Phylmar Regulatory Roundtable. It's a group of 34 companies

1 that are committed to improving workplace safety and health for
2 California workers.

3 I have known Mr. Welsh for 20 years, and have
4 worked with him in his various capacities at Cal/OSHA since
5 1990. He has always acted with integrity. He has always sought
6 the input and participation from stakeholders so that he could
7 develop a standard that was based on the best information
8 available to everyone.

9 And while we have not always agreed on what the
10 best way to approach those controversial and complex issues are,
11 he has always done what he believes is going to achieve improved
12 work places for healthy California workers.

13 I hope that you'll confirm him today.

14 CHAIRMAN PERATA: Thank you.

15 MR. HENNING: Patrick Henning on behalf of the
16 California State Council of Laborers.

17 We're in strong support of Len Welsh. We have,
18 as a union, been involved with Cal/OSHA since its inception, and
19 have always enjoyed the working relationship we have, both from
20 our working standpoint but also from our employer's standpoint
21 because of the mitigative process that OSHA has always brought
22 to us. Len has gone well out of his way to make sure that we're
23 always included in those discussions.

24 And we'd also like to echo some of the concerns
25 that Ms. Wei brought up regarding staffing. Staffing has not
26 been increased in the past ten years at Cal/OSHA. And they
27 can't get even, let alone keep up. So, they're at a standstill
28 at this point.

1 If we want to bring more money into this state,
2 we believe particularly with the underground economy, and the
3 way that Cal/OSHA collections work in a relatively fair way,
4 it's probably one of the fairest processes the state has, this
5 might be one place that you might want to consider.

6 Thank you.

7 CHAIRMAN PERATA: Thank you.

8 MR. BRESNAHAN: My name Jim Bresnahan. I am
9 former President of the Bricklayers and Allied Crafts Local 3,
10 and I'm currently the President of the United Irish Society of
11 San Francisco.

12 I'm here to endorse the confirmation of Len Welsh
13 as OSHA Chief, and to publicly thank him for his genuine concern
14 of the effects of dry cutting materials on the citizens of
15 California. Dry cutting is the leading cause of silicosis
16 amongst construction craftsmen, especially tile and bricklayers.
17 Len has been instrumental in making this critical regulation a
18 reality and a model for national regulation.

19 Without a doubt, being part of this is the
20 greatest accomplishment in my life.

21 Len, you'll never know how many young men and
22 women and their families you have saved from portable oxygen
23 bottles, and dying an agonizing death, but you have, and you
24 continue to do so.

25 On behalf of the members of the Bricklayers and
26 Allied Crafts Local 3, Jim Bowen of the International Union of
27 Bricklayers and Allied Crafts, all the union and nonunion
28 bricklayers, pipe layers, cement finishers, laborers and their

1 families, and all others who have had to eat this dust for too
2 many years, thank you and God bless you.

3 CHAIRMAN PERATA: Thank you.

4 Have we got the right guy here? You're Len;
5 right? Alan is --

6 [Laughter.]

7 MR. WELSH: Yes, well, sorry about that. It's
8 Len.

9 CHAIRMAN PERATA: We'll have to do this all over
10 again.

11 Yes, sir, come on up.

12 MR. RANK: Mr. Chairman and Members, I see the
13 clock as well as your picture, and I'm reminded that you want to
14 be out of here at 4:30.

15 CHAIRMAN PERATA: And you're still on East Coast
16 time.

17 MR. RANK: Yes, I am, unfortunately.

18 My name Steve Rank, and I'm here on behalf of the
19 District Council of Iron Workers of California and vicinity as
20 representing labor, and also representing management with the
21 Western Steel Council.

22 The Iron Workers represent over 18,000 iron
23 workers that build your buildings and bridges in this state.
24 And the employers' association, called the Western Steel
25 Council, that consists of the body of employers that represent
26 the steel erection and reinforcing steel contractors and
27 fabricators in the State of California.

28 I've been asked to come here today to request and

1 ask that Mr. Welsh be confirmed. Mr. Welsh has demonstrated to
2 us in the last five years that he is qualified to do his job.

3 We have put him through the test when there has
4 been significant issues regarding the steel erection industry.
5 We are considered one of the most high hazard industries in the
6 construction industry, and I can assure you, when it comes to
7 enforcement issues and understanding the regulations that need
8 to be implemented and enforced, there is no margin for error.

9 Mr. Welsh personally accompanied me to get on top
10 of bridges and on top of buildings in downtown San Francisco so
11 he could better understand the issues that were coming before
12 the advisory committee meetings that he helped to promote.

13 And I can tell you, the night before he came up
14 on these jobs, he went out and bought a pair a new boots. And
15 we all laughed at him, and I assure you, he had sores on his
16 feet for about a week after that. And we tease him about that.

17 But that's the kind of effort that we don't get
18 out of regulatory people around the country, particularly the
19 feds, that won't come out to you job site, that won't support
20 negotiated rule-making or advisory committee meetings.

21 So, we're here to protect this process, and
22 Mr. Welsh has -- has been there for us.

23 There's been many accomplishments and
24 achievements in the last five years, namely as stated earlier,
25 the heat illness program. The Governor appointed me as Chairman
26 to the Occupational Safety and Health Standards Board, which I
27 still currently serve on as a labor representative.

28 I was there that day when we passed the emergency

1 reg for heat illness. Len Welsh, Mr. Welsh, did a lot of work
2 behind the scenes to make that happen, to address the issues on
3 both sides, to find that middle ground to make it work. And
4 he's done a lot of training after that to make -- make sure that
5 it happens.

6 Also what was not mentioned about this is, in
7 order to get a construction permit in steel erection or a
8 project permit in the -- from a general contractor, you have to
9 have a heat illness program on the check list in order for you
10 to proceed to -- to break ground. And I've got to hand it to
11 him to make sure that that's on the check list during the permit
12 process.

13 The permit process is another achievement that
14 Len helped to revise. He has set the benchmark high here in
15 California that before you break ground, there are certain
16 things that must be done. That protects us not only with the
17 contractors in the State of California, but those that want to
18 come in here from south Texas and other places, thinking that
19 they're going to do what they want to do there, here in
20 California.

21 And I can assure you that when they show up to
22 town, that the phones are ringing down at the Division of
23 Occupational Safety and Health, and their people are on alert,
24 and they do not get their permits until they come forward with
25 the information that we have to bring.

26 So, we appreciate having apples to apples on the
27 permit system.

28 You've seen recently in the news with all the

1 crane accidents around the United States. Every major city is
2 having horrific, catastrophic crane accidents.

3 But here in California, it's the only state under
4 Mr. Welsh's tenure as acting Director, do we have an operator
5 certification program for -- for the State of California. We've
6 got that passed, and it's a model program for the rest of the
7 United States.

8 Not only that, he has to manage his Crane Unit,
9 that goes out and has to give permits whenever you erect a tower
10 crane. So, it's -- it's a step -- it's a model for the rest of
11 the country to follow.

12 Heat illness, we're the only state. You would
13 think that our neighboring states in Nevada and Arizona, with
14 their temperatures, would have a heat illness standard, but they
15 don't. We do.

16 Yesterday, I participated in a hearing with the
17 House Committee, chaired by Congressman George Miller in
18 Washington, D.C., where the feds don't have such a good report
19 card. We were there, challenging them on their poor
20 performance.

21 And the State of the California came up numerous
22 times about how this state is an example for the rest of the
23 other state plans to follow, as well as the feds.

24 California has taken the lead on welding fumes.
25 We have reduced the permissible exposure limits to iron workers
26 and other people that are doing welding in shops. They've
27 adopted the PELs that the manufacturers of the product say, and
28 American Conference of Industrial Hygenists have said that we

1 need to do that. So, he's taken the lead to adopt these
2 permissible exposure limits that have been out since 1986.
3 We're the only state that recognizes that.

4 So, I'm here today to ask that you confirm
5 Mr. Welsh, that he has the leadership skills. And I know
6 earlier you said that he's been doing this for four years, and
7 where has he been.

8 I can only say that based on our performance that
9 I see on a monthly basis on the Standards Board, I hope that
10 after you confirm him today, that you can also consider some
11 back pay for the last four years for the job that he's done.
12 He's done very well.

13 [Laughter.]

14 CHAIRMAN PERATA: Was he a volunteer for four
15 years?

16 Thank you.

17 MR. RANK: Thank you for your time.

18 MS. FISHER: Hi. Marti Fisher on behalf of the
19 California Chamber of Commerce.

20 I've worked with Mr. Welsh now for about eight
21 years in two different jobs. And I don't want to repeat what's
22 already been said, but I agree with everything positive that's
23 already been said, but a few things that haven't -- haven't
24 really been reiterated enough about -- about working with
25 Mr. Welsh.

26 He always has always had an open door policy.
27 Anyone can come and talk with him at any time about any of the
28 issues, and he's always been completely straight up. He doesn't

1 just try to placate or smooth things over. He'll give me the
2 straight-up truth every time about what's going on.

3 And we can usually come to some sort of
4 compromise or solution, and we're generally happy with the end
5 result in all of the projects that I've worked with on -- worked
6 on with him.

7 I worked on many projects over the years,
8 including the crane operators certification standards, the heat
9 illness standards, a lot of very contentious and difficult
10 environments where we were working on things where people were
11 on far ends of the spectrum throughout the process. And
12 Mr. Welsh was always able to sort of smooth things over, keep
13 things calm, and bring things to a resolution.

14 So, I'm really pleased that he's here today, and
15 it seems like everybody's supporting him. And I'll look forward
16 to many more years of working with him.

17 CHAIRMAN PERATA: Thank you.

18 MR. LITTLE: Good afternoon, Mr. Chairman.
19 Thank you for the opportunity to appear.

20 Good afternoon to the Members of the Committee.

21 I'm Bryan Little. I represent the California
22 Farm Bureau Federation.

23 On behalf of the 91,000 farmers and ranchers we
24 represent across the state, I'd like to ask you to confirm
25 Mr. Welsh to be the Chief of the Division of Occupational Safety
26 and Health.

27 We've worked very closely with Mr. Welsh over
28 last few years. We appreciate his consultative approach on

1 variety of issues, from enforcement, to standards, to
2 cooperative programs. And it's our hope that we would have the
3 opportunity to continue to do that.

4 Just to give you a concrete example of how that
5 approach has been helpful in trying to protect workers and work
6 with employers in California, on Monday in Stockton, we, the San
7 Joaquin County Farm Bureau, the Farm Employers Labor Service,
8 and other organizations work with some of Mr. Welsh's
9 consultation staff to train over 100 farmers, supervisors, and
10 farmworkers in English and Spanish on the basics -- again on the
11 basics of the heat stress standard, and to help workers
12 recognize the oncoming symptoms and signs of heat stress in
13 themselves so that they can take appropriate action, when they
14 need to, to protect themselves and alert their employers to the
15 fact that they need shade and need water.

16 So with that, I would ask that you act
17 expeditiously to confirm Mr. Welsh, and thank you for the
18 opportunity to be here today.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. DIEDE: Mr. Chair, Members of the Committee,
22 I'm Brad Diede with the California Professional Association of
23 Specialty Contractors, the acronym is CALPASC.

24 We represent nearly 500 member companies across
25 the State of California, conducting both residential and
26 commercial construction.

27 And we see Mr. Welsh as someone who brings
28 balance, and both tough and fair balance, to the -- to the

1 process of making the agency more effective.

2 We respectfully ask for you support in the
3 appointment of Mr. Welsh. Thank you.

4 CHAIRMAN PERATA: Thank you.

5 Anyone here in opposition?

6 This is a pretty good send off. It's worth
7 waiting for four years if you get talk like this.

8 There is a point that was brought up here, and
9 it's certainly worthwhile considering now with the budget. I
10 didn't mean make light of the fact that the people are being
11 paid and don't feel like they get anything in return. That's
12 kind of normal.

13 But there should be some department incentive.
14 If you're going to go out there and get it, you ought to get
15 some of the appropriate staff that you need to continue to get
16 it. So, we'll take another look at that, maybe on a one-to-one
17 basis with Fish and Game.

18 [Laughter.]

19 CHAIRMAN PERATA: We're heavy into this
20 post-partisan stuff. So, you're going after people that are bad
21 guys, and they're going after rabid ducks.

22 So, that's something and I appreciate that.
23 That's something that makes sense. Just because it may be a
24 General Fund expense doesn't mean that we wouldn't get it back.
25 There's a lot of room for improvement there, so I appreciate
26 that.

27 Do we have a motion?

28 SENATOR DUTTON: Move it.

1 CHAIRMAN PERATA: We have motion to approve.
2 Call the roll.

3 SECRETARY WEBB: Cedillo.

4 SENATOR CEDILLO: Aye.

5 SECRETARY WEBB: Cedillo Aye. Dutton.

6 SENATOR DUTTON: Aye.

7 SECRETARY WEBB: Dutton Aye. Padilla.

8 SENATOR PADILLA: Aye.

9 SECRETARY WEBB: Padilla Aye. Perata.

10 CHAIRMAN PERATA: Aye.

11 SECRETARY WEBB: Perata Aye. Four to zero.

12 CHAIRMAN PERATA: Four-zero, we'll keep the roll
13 open.

14 Congratulations.

15 MR. WELSH: Thank you, Senators. Thank you very
16 much.

17 [Thereafter, SENATOR BATTIN
18 voted Aye, making the final
19 vote 5-0 for confirmation.]

20 CHAIRMAN PERATA: Jerilyn Harris.
21 You're wounded, too. I guess we're going to have
22 to go easy on you.

23 MS. HARRIS: I am. Sympathy.

24 CHAIRMAN PERATA: Welcome.

25 MS. HARRIS: Thank you, Mr. Chairman and
26 Senators, Nettie.

27 I'm delighted to be here today again about my
28 position on CalSTRS, the Board of CalSTRS.

1 And I would like to introduce our Deputy
2 Director, Ed Durman, who is with me today, and also friends from
3 CRTA, but I left the heavy hitters at home, my kids and
4 grandkids, who were present the last time around.

5 And I'd like to say to all of you that I'm really
6 honored to be in the position that I am on the CalSTRS Board,
7 and I take it extremely seriously.

8 I have a long history in education. I'm a
9 product of the public schools of the State of California, as are
10 my children. And I thought I was pretty well done after
11 finishing almost 30 years teaching, first in Beverly Hills and
12 then in Ukiah, middle and high school, spending two years at the
13 University of California, Berkeley, and almost two years here in
14 California, Department of Education.

15 Then I went home, and I worked in my garden as
16 retiree, and no one was more surprised than I when I received a
17 phone call from the Governor's Office asking if I was interested
18 in a post on CalSTRS.

19 I honestly had no real idea just what I was
20 biting off: the responsibility, what it means to be a
21 fiduciary, the education requirements. And I want you to know
22 that I'm having a wonderful time with this, and I take it so
23 very seriously. This is an amazing position to be in, where
24 you're responsible for almost 800,000 educators in this state,
25 many of whom are living close to the poverty level, some below.
26 And most of us are women; most of us are alone; most of us do
27 not have health care.

28 And what you have done for us, what our school

1 districts have, and most particularly what CalSTRS has to be
2 sure that we have an income in retirement is extremely not only
3 important but a responsibility that I know all of us on our
4 board take very, very seriously.

5 So, if you have any questions.

6 CHAIRMAN PERATA: I just have one.

7 What's going on with health care? We talked
8 about that last time.

9 MS. HARRIS: Well, at this point we're just
10 trying to continue to keep it on the table.

11 There was a Health Insurance Task Force that
12 CalSTRS at the Board charged to look not only at ASFME
13 requirements and reporting for those districts that had lifetime
14 health care for their teachers, but to find out just how many
15 did not, because as I went around the state, it seemed I heard
16 nothing but how difficult it is for retirees to be able to
17 shoulder the health care responsibility, to write the checks
18 that it takes, and that few other than the large districts in
19 the state were continuing to offer retiree health care,
20 regardless of how many years you served.

21 Kind of difficult when you think that had you
22 gone into another field other than teaching, and worked in an
23 office for the State of California, or for DMV, or whatever, or
24 any one of a number of other choices, you would be taken care of
25 with lifetime health benefits.

26 But those of us who chose to teach are on our
27 own. And I know personally, and I'm not part of the pre-'99
28 group that retired that are really, really trying to scrape out

1 an existence, but I sit down and write over \$600 in checks at
2 the start of each -- each month just to take care of health
3 care. And that's a huge chunk when our average retiree gets
4 about \$2700 a month from STRS.

5 CHAIRMAN PERATA: What's the answer?

6 MS. HARRIS: I think the answer is for the State
7 of California to provide and give the districts not just a
8 chance, but the opportunity to buy into a state pool of retiree
9 health care.

10 CHAIRMAN PERATA: Has that formal recommendation
11 been made by STRS?

12 MS. HARRIS: It has not been made by STRS, no.
13 This is being made by me.

14 CHAIRMAN PERATA: Did you talk to your Board
15 about it?

16 MS. HARRIS: We have talked about it. The Board
17 absolutely understands the gravity of the health care situation.
18 However, the Board also understands our number one priority as
19 fiduciaries is to address the \$19 billion hole in our fund. We
20 have to be sure that what we have initially promised will be
21 provided to retirees.

22 But I don't think there's a Board member who
23 wouldn't say if we had an opportunity to -- to provide our
24 retirees with health care, that we wouldn't do it.

25 I think that a possible first step, and one that
26 is not as large as saying, as we had initially thought using
27 excess SBMA funds, or using SBMA funds for current retirees in
28 pools for those who are coming in to being to address this in

1 the future, that -- boy, it just went off the top of my head
2 where I was going with this. I apologize.

3 CHAIRMAN PERATA: You could be a Senator.

4 [Laughter.]

5 MS. HARRIS: I think it's a combination of
6 nervousness, but our Board gets it, and certainly we, the
7 retirees, do.

8 And I do apologize.

9 CHAIRMAN PERATA: I would just make one
10 suggestion.

11 Since it doesn't cost anything to express an
12 opinion, and you can do a resolution or a letter, but we're
13 never going to get, here, that message unless you start --

14 MS. HARRIS: Unless it comes from us.

15 CHAIRMAN PERATA: Yes. I mean, you've got the
16 purview. And in all due respect to the fiduciary
17 responsibility, if you are a retired teacher and somebody said,
18 "We have a fiduciary responsibility, therefore you're being
19 treated like second-class citizens," that would make me angry,
20 particularly, as you said, if you juxtapose public service in
21 some areas with teaching, it's scandalous.

22 So, light us up.

23 MS. HARRIS: Thank you, Mr. Chairman. And I
24 remembered where I was going.

25 And that is that --

26 CHAIRMAN PERATA: I can't remember where I've
27 been. God bless you.

28 [Laughter.]

1 MS. HARRIS: That Medicare Part B is about \$92 a
2 month. And a first step for STRS to begin paying or budgeting
3 for Medicare Part B would be, in my opinion, an extremely
4 important first step.

5 CHAIRMAN PERATA: Good. Have CTA do that.
6 They've got a lot of opportunities.

7 MS. HARRIS: I think CTA would be with us on
8 that.

9 CHAIRMAN PERATA: That's good.
10 If they started leaning on people in this
11 building, you'd be surprised what would happen.

12 Any other comments, suggestions, you want to
13 give?

14 Alex.

15 SENATOR PADILLA: Thank you, Mr. Chair.

16 I'm actually curious, Ms. Harris, as to what your
17 role or involvement has been in the effort to undo the tobacco
18 investment ban, and what the status of such efforts are?

19 MS. HARRIS: Well, I'll tell you personally where
20 I come from, and then the fact that we will be voting on this in
21 the near future.

22 I lost my father to heart disease. He was a
23 chain smoker. I lost my mother to heart disease, and she never
24 smoked, but she lived in the house with a chain smoker. I
25 loathe tobacco.

26 We do have a series of studies, and we have a
27 series of principles that we use, that we adopt, when we invest,
28 or when we dis-invest. And those principles have kept us out of

1 tobacco for several years.

2 The main concern with tobacco stocks, since
3 they've become increasingly more diversified, is that the
4 lawsuits out there would make them a poor investment.

5 Our staff is bringing information to us now that
6 says that that has changed, and we will be voting again on
7 whether we will continue to be out of tobacco.

8 The exclusion of tobacco has caused CalSTRS close
9 to billion dollars over the last eight years for our retirees.
10 And we're fiduciaries.

11 SENATOR PADILLA: You're giving me what sounds
12 like a dollars and cents argument as to why you might be very
13 well considering or reconsidering the existing policy.

14 I certainly call into question the methodology
15 behind those numbers. While you can look at how a stock
16 portfolio might have performed with tobacco monies there, if
17 there's sort of an opportunity cost, I'm not sure those
18 methodologies are taking into account the health care costs on
19 the state and the health care costs of the beneficiaries of
20 CalSTRS when heart disease, lung disease, disease after disease
21 caused by smoking is as high as it remains in California, even
22 though the smoking rate has dropped.

23 And I don't necessarily want to get caught up in
24 an economic or financial policy debate, because I think it
25 transcends that, for the very reason the tobacco investment ban
26 policy was put in place, and for the very reasons why this state
27 has been a leader in reducing tobacco use, sales to minors,
28 increasing protections from second-hand smoke.

1 I think we have a moral obligation to stay on
2 this path. So, to hear not just the financial arguments but
3 just the fact that the Board is reconsidering, and agendizing,
4 and hiring consultants to make recommendations is more than
5 troublesome to me.

6 And I'm not sure what the near future timeframe
7 is for making this decision, but I'll leave it to the Chair of
8 this Committee to decide whether or not that's something worth
9 waiting and watching for, before making this particular
10 decision.

11 CHAIRMAN PERATA: Anyone here on behalf? Yes,
12 sir.

13 MR. HEWITT: Thank you, Mr. Chairman, Members of
14 the Senate.

15 It's my privilege to represent the California
16 Retired Teachers Association, 52,000 members strong.

17 CHAIRMAN PERATA: Do you have a name?

18 MR. HEWITT: On behalf of our President, Betty
19 Soennichsen, our legislative advocate, David Walrath, our CEO
20 Angelique Hill, most of whom are still in the audience.

21 CHAIRMAN PERATA: That's a lot of names. What's
22 your name?

23 MR. HEWITT: My name is Ken Hewitt. I'm the
24 State Chair of the Legislative Committee. My job is watch
25 legislation.

26 We speak on behalf Jerilyn Harris because her
27 appointment to the State Board has the specific designation of
28 representing retired teachers. And the State Board monitors a

1 fund on behalf of not only retired teachers, but those who are
2 not yet retired. In fact, most of the income they get comes
3 from active teachers.

4 And so, our opinion about Ms. Harris, I think,
5 should be significant in terms of you. She represents the
6 retired teachers of the state. She's the only member of the
7 Boards with that designation.

8 And we, in watching her appointment and watching
9 her ability to handle the massive amounts of information on that
10 board, and the delicate tightrope walks that Senator Padilla
11 just mentioned, we are here to tell you that our belief is, she
12 has done an amazing job. She represents us well.

13 She understands the economic and health care
14 issues that we, who are in our 70s, are now facing. She
15 understands the fiduciary responsibilities that are necessary
16 for a multi-billion dollar fund with international status.

17 She -- her colleagues are world renowned experts
18 in the field of corporate finance and corporate governance. And
19 she leads in many of those subcommittees, as I have witnessed.

20 Those colleagues have shown such support for her
21 as to appoint her to be next Chairman of this Committee, the
22 Teachers Retirement Board.

23 We are very pleased with her.

24 I personally am very happy because she and I
25 taught together in the same school. And the difference is that
26 she went on to Beverly Hills, and I went to Redding.

27 [Laughter.]

28 MR. HEWITT: That's the reason why she's here for

1 an appointment, and I'm speaking on her behalf.

2 Nevertheless, as a retired teacher who's alert
3 still, and as one who watches this process from the outside, I
4 can tell you that this woman is doing an amazing job. She is --
5 it is impossible for her or any other board member to satisfy
6 all of the clients and all of the constituents all of the time,
7 and you know that very well.

8 We are here to tell you that from our perspective
9 as retired teachers, we love this lady, and we hope that she
10 will continue for many years to represent us on the board.

11 Thank you for your time.

12 CHAIRMAN PERATA: Thank you.

13 Anybody want to top that?

14 SENATOR PADILLA: I wouldn't mind putting this
15 appointee over. The timeframe is in January. We have a lot of
16 time.

17 I'll defer to the Chair, but I'm not prepared to
18 vote for confirmation today.

19 CHAIRMAN PERATA: You wanted to spend sometime on
20 the investment issue?

21 SENATOR PADILLA: Yes.

22 CHAIRMAN PERATA: We'll give you two a little
23 time to work together on that. Then we'll just we take you up
24 for a vote only.

25 SENATOR PADILLA: Do you have a more specific
26 timeframe? You said "near future" there would be a vote.

27 MS. HARRIS: I might ask Mr. Durman.

28 Is it in September? It is coming back to us in

1 September because there was concern expressed about the health
2 issue, the insurance issue and --

3 SENATOR PADILLA: Well, I'm happy, even before
4 then, just you and I get together and have more of a thorough
5 conversation.

6 MS. HARRIS: I'd be happy to do that.

7 I have surgery coming up in two-and-a-half weeks
8 on the other hand, so I'm hoping that -- I'm going to be home
9 for a while -- maybe we might meet before that.

10 SENATOR PADILLA: Okay. Thank you.

11 CHAIRMAN PERATA: Do you still live in Beverly
12 Hills?

13 MS. HARRIS: No, I live in Ukiah. I taught at
14 Ukiah High School. I taught at Beverly Hills when I first
15 graduated from U.C.L.A. That's a long time ago.

16 CHAIRMAN PERATA: Okay, we'll put it over just
17 until you guys get a chance, and then put you back as a vote
18 only.

19 Thank you very much.

20 MS. HARRIS: Thank you all. Thank you for your
21 time.

22 CHAIRMAN PERATA: Now Ms. Mule.

23 MS. MULE: Good afternoon, Chairman Perata and
24 Members.

25 Thank you for the opportunity to speak to you
26 today.

27 My family is unable to be here today, but I do
28 have my other family here with me, the people that I work with

1 at the Integrated Waste Board. And I just want to recognize
2 them for their dedication and service to the mission of the
3 Integrated Waste Management Board and thank them for being here
4 today.

5 I am honored to appear as the Governor's
6 reappointed member to the Waste Board. And it's a personal
7 privilege for me to share my 20 years' experience and
8 perspectives with my fellow board members as well as staff.

9 When I came to the board in 2004, California was
10 at a 48 percent diversion rate, the first electronic waste
11 recycling program of its kind had yet to be implemented, and we
12 had not considered the impacts of climate change in conducting
13 our programs and regulatory activities.

14 Now today, California continues to lead the
15 nation with a statewide diversion rate of 54 percent. The
16 e-waste recycling program is the nation's most successful, where
17 we recycle nearly 450 million pounds of electronic devices. Of
18 course, we're an integral part of the Governor's Climate Action
19 Team with the implementation of AB 32. We've achieved one of
20 our greenhouse gas reductions strategies, which was 50 percent
21 diversion, and we continue to work on maximizing landfill
22 methane capture and increasing recycling towards an ultimate
23 goal of zero waste.

24 And the world is now recognizing what we in the
25 recycling business have known all along, and that is recycling
26 reduces our carbon footprint by conserving resources and energy
27 and reducing pollution.

28 Now, proud as I am of our statewide success, I'm

1 also pleased to say that I've played a part in several key
2 improvements in the way the board conducts its activities.
3 These include: the adoption of measurable strategic directives
4 for effective organizational performance; sponsoring legislation
5 this year that will track AB 939 progress and compliance in a
6 more timely and accurate manner; the adoption of regulations and
7 policies that have enabled us to strengthen our enforcement
8 capabilities; and in a larger sense, preserving one of the
9 hallmarks of this board, and that is the productive and
10 collaborative relationships with our stakeholders who have
11 brought both their commitment and financial investment to the
12 AB 939 mission.

13 And one that was important to me personally was
14 providing the training and tools to our employees to enable them
15 to do their jobs more effectively. Only with continued emphasis
16 on professional development can the board hold itself
17 accountable for the strategic directives that we set forth.

18 And I'm also pleased with the progress that we've
19 made over the years in providing additional resources to local
20 government and NGOs to implement diversion programs and expand
21 markets for recycled content products.

22 I look forward to continuing to serve as a member
23 of the board. And I feel that these are very exciting times to
24 be involved with expanded materials diversion, climate change,
25 and the development of markets for clean, renewable energy and
26 fuels.

27 Now, as Governor Schwarzenegger has stated many
28 times, environmental protection and the economy can co-exist

1 because a healthy environment leads to a strong economy. And in
2 my opinion, no initiative exemplifies this better than the
3 business of recycling. And I'm proud to have been a part of
4 this recycling revolution for the past 20 years, and I look
5 forward to continuing my contribution to protecting our
6 environment as a member of the Integrated Waste Management
7 Board.

8 Again, I thank you for the opportunity to appear
9 before you today.

10 CHAIRMAN PERATA: Thank you.

11 Do you promulgate the regulations for e-waste,
12 how it is collected and all that?

13 MS. MULE: Yes, we do.

14 CHAIRMAN PERATA: What's the law right now?

15 MS. MULE: As far as --

16 CHAIRMAN PERATA: I've got a bunch of batteries,
17 a light bulb. What do I do with them?

18 MS. MULE: Well, e-waste -- the current e-waste
19 law covers only certain electronic devices. It's those with a
20 CRT screen of four inches or larger. And it's just a limited
21 number of electronic devices that are covered under SB 20.

22 CHAIRMAN PERATA: Would you need legislation to
23 go further?

24 MS. MULE: Well, I believe that there is a law
25 in -- in the Legislature right now that's looking to expand the
26 universe of covered electronic devices, that we could put a fee
27 on and then -- and then collect.

28 CHAIRMAN PERATA: Is that your bill, Alex?

1 SENATOR PADILLA: No.

2 CHAIRMAN PERATA: Do you know whose bill that is?

3 MS. MULE: I believe it's Lori Saldana's bill,
4 Assembly Member Saldana.

5 CHAIRMAN PERATA: There's not a lot of incentive,
6 but there's also not direction. I've been carrying light bulbs
7 around in any car --

8 MS. MULE: Right, and those are considered
9 universal waste rather than -- we have an alphabet soup of
10 waste. We have u-waste, e-waste, C&D waste.

11 But the light bulbs are the u-waste.

12 CHAIRMAN PERATA: We want to make it as
13 complicated as we can. That's a great idea.

14 MS. MULE: But we are -- Home Depot just
15 announced a program to collect compact fluorescent bulbs
16 nationwide. So, it's -- it's one of these things that the
17 process is progressing, sometimes not as quickly as we'd like.

18 CHAIRMAN PERATA: But generally speaking, if you
19 put a bounty on it, it happens better.

20 MS. MULE: Well, yeah, it depends. Ultimately
21 the board has looked at an extended producer responsibility
22 framework that would look at perhaps incorporating the cost in
23 the design of and on the front-end from the manufacturers, so in
24 the design of the product.

25 CHAIRMAN PERATA: Senator Padilla.

26 SENATOR PADILLA: Actually, I want to first of
27 all thank you for the help and assistance you've provided.

28 You articulated that the Waste Management Board

1 has a lot to be proud of, but the state has a lot to be proud of
2 with how we've done post the Byron Sher legislation that set out
3 the goals and timetables and the path for the level of recycling
4 we do in this state.

5 And you've been very helpful, as has staff, in
6 legislation I proposed to try to take us to the next level.

7 MS. MULE: Right.

8 SENATOR PADILLA: We set 50 percent diversion as
9 goal, and we're at 54 statewide now. And I think everybody's in
10 agreement that we can and should do more.

11 You've touched upon some of the strategies that
12 we discussed, from producer responsibility -- we know the
13 commercial sector has a lot more to do -- and other tools.

14 So I just, on the one hand, want to go on record
15 to say that.

16 But on behalf of one of our colleagues, Senator
17 Steinberg, I did want to raise an issue and ask for your
18 response or thoughts. And specifically, he represents the
19 Sacramento area, obviously, and apparently the residents and
20 businesses of South Sacramento raised concerns with the board's
21 consideration of a permit for the Florin Perkins disposal site.

22 A letter from Senator Steinberg to the board said
23 that the permit was deficient and inconsistent with earlier
24 agreement within the city on this site. He also says the
25 project may violate CEQA, that parties are suing the operator,
26 and the board should not have acted on the permit at that time.

27 Apparently the board approved the permit last
28 week on consent, no less, and the board staff has told Senator

1 Steinberg's office that CEQA required it to approve the permit
2 and that, quote, "their hands were tied."

3 Yet his office's review of both the CEQA statute
4 and the guidelines suggest that the board at a minimum should
5 have noted the concerns regarding CEQA compliance and
6 conditioned the permit on resolving those concerns. CEQA, in
7 fact, does allow the board to reject a permit and allows the
8 board to take over the CEQA review of the project where current
9 CEQA documents were found to be inadequate.

10 So, based on information that you had available
11 to you, based on Senator Steinberg's letter and his staff's
12 interpretation of what's happened, I felt this was an
13 opportunity not just to raise the issue, but have you go on
14 record with your thoughts on in particular case because it's in
15 many ways indicative of concerns and complaints of applications
16 that come from all over the state.

17 MS. MULE: Thank you. I really do appreciate the
18 opportunity to address this issue.

19 The permit that was before us was vetted
20 extensively at our Permitting and Compliance Committee meeting.

21 The way that we're structured is, we have three
22 standing committees. And we vet those issues at -- at the
23 committee level, and then we meet the following week with the
24 full board to further discuss those issues if need be.

25 At the Permitting and Compliance Committee, I
26 believe all but one of our board members was present, and we did
27 extensively vet this issue.

28 And we did ask our staff a number of tough

1 questions.

2 The way that we are authorized by law, we -- the
3 LEA approves the permit, and then the board concurs with that
4 permit. And it's based on the requirements in PRC, Public
5 Resources Code 44009, that have to deal with state minimum
6 standards as well as operating liability, financial assurances,
7 foreclosure and post-closure maintenance, and the integrated --
8 or the county integrated waste management plan.

9 And so, if all those requirements are met under
10 current statute, the board -- I think the statute says the board
11 shall concur with that permit.

12 And so, the purview of our authority is currently
13 somewhat limited as to what we can and cannot approve. It's
14 basically, we're approving the operation of that facility.

15 Any land use approvals are at the local level and
16 as well as CEQA.

17 Now with CEQA, our staff -- we asked our staff
18 about that as well. And our staff, our legal counsel, has told
19 us, as well as our technical staff, that CEQA -- under CEQA,
20 we're a responsible agency. And again, our authority is
21 somewhat limited.

22 And if -- if we cannot -- we have to still act on
23 that permit, if -- even if there's a lawsuit. The only way that
24 we cannot act on that permit is if there's that lawsuit and
25 there's an injunction in place. And currently there is no
26 injunction in place.

27 So, believe me, we are sometimes more frustrated
28 than, you know, than even others because our authority is

1 somewhat limited as to what we -- we can look at when we are
2 deliberating and concurring with the permit.

3 SENATOR PADILLA: Well, on the surface level, it
4 sounds like you're doing nothing other than playing it by the
5 book.

6 But as I hear you describe the process, and when
7 the board shall concur based on certain findings having been
8 made, I can't help but wonder, who's making the findings?

9 If it's sort of a staff recommendation based on
10 staff's suggestions, "These are our findings," has the board, or
11 have you as an individual member of the board, ever disagreed
12 with the findings made by staff? Even though that's the finding
13 being presented to you, if you disagree then that's the basis
14 for not necessarily approving on consent or concurring because
15 of that difference of opinion.

16 MS. MULE: Well, we have questioned staff on a
17 number of permits as far as their findings with CEQA and the
18 other requirements in PRC 44009.

19 And again, they are the technical experts, and so
20 we do rely on their expertise. And again, as I stated, this --
21 this particular item was -- was very thoroughly vetted at our
22 Permitting and Compliance Committee meeting. We did have quite
23 a discussion, and we did have members of the public there who
24 were in opposition to the permit. We discussed it with them as
25 well.

26 So, it was thoroughly vetted.

27 SENATOR PADILLA: My line of questioning is less
28 on this project specifically. It's a specific concern to

1 Senator Steinberg. But because I wasn't at the hearing, I'm not
2 familiar with this particular application, I'm more process
3 oriented.

4 In your time at the board thus far, has there
5 ever been a time when you disagreed with the findings of the
6 staff?

7 MS. MULE: There have been, yes.

8 SENATOR PADILLA: Thank you.

9 MS. MULE: You're welcome.

10 SENATOR DUTTON: Just one quick question.

11 Obviously, we've got some budget issues this
12 year, and so we're kind of looking at different things. The LAO
13 specifically made a recommendation and proposed recycling
14 programs between the Department of Conservation and Waste
15 Management.

16 Have you talked about that yet? Is that of any
17 value?

18 MS. MULE: Well, the board has not been directed
19 to -- to investigate that or discuss it.

20 However, I do want to say that we do enjoy a very
21 strong working relationship with the Department of
22 Conservation. We've collaborated on a number of initiatives and
23 issues and continue to do so as this, you know, recycling
24 initiative expands.

25 So yes, we work very closely with them.

26 SENATOR DUTTON: We'll forward their
27 recommendation to the department so they can take a look at it
28 for us and let us know if there's any value there.

1 Thank you.

2 SENATOR BATTIN: I guess everybody's done.

3 Thank you. I'm sorry I was late. It's just that
4 time of year --

5 MS. MULE: I understand.

6 SENATOR BATTIN: -- where, like I said, I'd much
7 rather have been here than where I was.

8 Do you have a closing statement you'd like to
9 make?

10 MS. MULE: I'd just ask for your Aye vote, and
11 thank you very much for the opportunity to serve this state. It
12 really is a pleasure for me to do so.

13 SENATOR BATTIN: Witnesses in the support?

14 Do you have any family here?

15 MS. MULE: You missed it. I said my family's not
16 here, but my other family is here, and those are the people that
17 I work with at the board.

18 SENATOR BATTIN: Okay.

19 MR. MURRAY: Mr. Chairman and Members, Mark
20 Murray with the environmental group Californians Against Waste.

21 While this is -- Rosalie is the representative in
22 the industry slot on the board, we have enjoyed an excellent
23 working relationship with her on the board, and we are in strong
24 support of her confirmation for another term on the Integrated
25 Waste Management Board.

26 Rosalie brings what I would describe as the
27 modern solid waste management perspective to the Integrated
28 Waste Management Board, a perspective that is focused on waste

1 reduction and recycling first, and then management of what's
2 left over.

3 And I would just touch on the issue that Senator
4 Steinberg and Senator Padilla have raised. We would strongly
5 support legislation that would provide the Integrated Waste
6 Management Board with greater authority for scrutinizing solid
7 waste facility permits.

8 My guess is that some of the other folks who are
9 going to get up and support Rosalie for confirmation may not
10 agree with us on that perspective, but I think that,
11 unfortunately in many instances, the Waste Board's hands are
12 tied with regard to the issues that they are allowed to look at
13 in saying Yea or Nay to a permit. But that's a discussion for
14 another time.

15 Again, we strongly support the confirmation
16 Rosalie Mule to the Integrated Waste Management Board. Thanks.

17 SENATOR BATTIN: Thank you.

18 MR. STODDARD: Mr. Chairman and Members, just
19 briefly, Ken Stoddard on behalf of Waste Management.

20 We appreciate the great job that Ms. Mule has
21 done over the past few years, really showing leadership on both
22 the implementation of AB 939, and making that simpler for local
23 governments, but also making the numbers more precise,
24 leadership in reducing greenhouse gas emissions, and making sure
25 local governments are just getting more technical assistance.

26 I would add also on this specific issue relating
27 to Florin-Perkins landfill, which was Mr. Steinberg's and
28 Padilla's issue, that whole situation identified some real

1 shortcomings in the statutory authority that the board has to
2 deal with some pretty serious enforcement issues. And the board
3 has got on it. They're sponsoring legislation by Mr. Ruskin to
4 try to fill those voids.

5 And we actually think that the board has done a
6 really good job of trying to step up and make sure they've got a
7 full tool box of enforcement tools when some of those real
8 serious problems actually arise.

9 We'd urge support and approval of her
10 confirmation today.

11 MR. MALAN: Mr. Chair and Members, Justin Malan
12 with the Local Environmental Health Directors. We have most of
13 the LEAs, the local enforcement agencies, under us.

14 And again, as others have said, even though Ms.
15 Mule is the industry representative, we have found her to be
16 remarkably collaborative and very, very helpful. She's someone
17 that's got extensive experience in the field of solid waste
18 management, and we found it extremely helpful.

19 We've also been able to work with her very, very
20 closely and collaboratively on some of those difficult issues
21 like permitting and enforcement. And we haven't really he as
22 being the sort of the industry go-to person. She's just been a
23 board member that's been available to us and has been an
24 immeasurable help to the local enforcement agencies on
25 permitting and enforcement issues.

26 So, we wholeheartedly commend her and recommend
27 your Aye vote. Thank you.

28 SENATOR BATTIN: Thank you.

1 MS. ROSS: Good afternoon. Kyra Ross on behalf
2 of both the League of California Cities and the California State
3 Association of Counties, in strong support of the reconfirmation
4 Ms. Mule.

5 We've had a wonderful time working with her in
6 the last couple of years. She's done a great job of
7 understanding the needs of local government and really
8 responding to us when we've had a lot of concerns.

9 Thank you.

10 MR. SMITH: Mr. Chairman and Members, Paul Smith
11 with the Regional Council of Rural Counties, representing 31
12 rural county Boards of Supervisors.

13 Our supervisors are also involved in solid waste
14 management issues. And even though the rural counties probably
15 generate about 5 percent of the state's solid waste, we're
16 constantly amazed at Ms. Mule's devotion with her energy and her
17 time to addressing our issues with respect to compliance with
18 AB 939.

19 We can't think of a better Waste Board member
20 than her in devoting her time and her energies to the concerns
21 that we bring to the issue.

22 With that, we are in strong support of her
23 confirmation and urge you to approve it.

24 MR. JENSEN: Mr Chair and Members, Kelly Jensen
25 representing NorCal Waste Systems.

26 We echo the comments and very strong support of
27 the nominee.

28 MR. HELGET: Mr. Chairman, Members of the

1 Committee, Chuck Helget, representing Allied Waste, also in
2 strong support of the confirmation.

3 CHAIRMAN PERATA: Thank you.

4 I see you started in Jersey. That's a good place
5 to start your business.

6 [Laughter.]

7 MS. MULE: And I'm Italian.

8 CHAIRMAN PERATA: Perfect.

9 I apologize for being out of the room.

10 I missed your line of questioning. Did you want
11 to hold this over or an opportunity to explore?

12 SENATOR PADILLA: That was Senator Steinberg's
13 request.

14 CHAIRMAN PERATA: Senator Steinberg, I think he's
15 talked with you?

16 MS. MULE: Yes. He is working with our staff.
17 We've been in communication.

18 As a matter of fact, I think Susan from his
19 office is here. We've been in discussions with them, again, to
20 educate them on the current process, and again, the limits of
21 our authority.

22 So, we have been working with him on this.

23 CHAIRMAN PERATA: He has asked for the matter to
24 be continued until that process is complete, so we will do that.
25 Then we'll just have you come back for a vote only.

26 MS. MULE: Fine.

27 CHAIRMAN PERATA: Thank you so much.

28 MS. MULE: Thank you.

1 CHAIRMAN PERATA: Okay, we have four Appointees
2 Subject to Confirmation But Not Required to Appear.

3 [Thereupon the Rules Committee
4 acted on the above.]

5 CHAIRMAN PERATA: The following members of the
6 Corrections Standards Authority, Cleotha Adams, William Powers,
7 Mimi Silbert and Adele Arnold, are not required to appear. But
8 I'd like to read into the record the following.

9 The last appointees we confirmed to this board
10 were Sheriff Ed Prieto and Fresno Probation Officer Linda
11 Penner. We were not happy with their performance, but they
12 promised to do better.

13 I'm going to move these appointees, but Senator
14 Machado informs me that there is no improvement in the work of
15 this body. It plays a critical role in the reentry process, but
16 its staff was so badly informed at Machado's Budget Subcommittee
17 hearing that he recessed the hearing in frustration.

18 The old Board of Corrections was a well respected
19 body. This new Corrections Standards Authority is not serving
20 the Governor nor the public well. We're going to give Matt
21 Cate, the new CDCR Director, a chance to improve the situation.

22 And I would just say that this is in complete
23 deference to Mr. Cate. He's the new boy on the block and
24 deserves an opportunity.

25 But Senator Machado has invested more time than
26 anybody I know in our body on the matter of the Department of
27 Corrections. So, his position and point of view is well
28 respected, and it should be well advised.

1 So with that, on those four, call the roll.

2 [Thereupon the Rules Committee
3 confirmed all four appointees
4 with a vote of 5-0, then
5 SENATORS BATTIN and PADILLA
6 added their votes to legislative
7 items.]

8 CHAIRMAN PERATA: The last four items are the
9 Governor's appointees on the Board of Parole Hearings, who are
10 up for a vote only.

11 At the last meeting there was an extensive and, I
12 thought, very enlightening discussion that took place regarding
13 the four members and the general condition and state of the
14 Parole Board.

15 This probably is one of the hardest and most
16 thankless jobs that anyone would take on in the state. And I
17 think that all of us acknowledge and recognize that.

18 I've done eight of these hearings. And from the
19 time we started until now, I believe that we're in better shape
20 than we were. We have a good Executive Director now who's
21 smart, has a reputation for being efficient. We certainly have
22 a Secretary of the Department of Corrections and Rehabilitation
23 who's very well versed on the problems. And God knows, he's
24 going to need all the talent that he has, but there's a ways to
25 go yet.

26 People were surprised that we took as much time
27 on a set of hearings like we did last week. And that alone, I
28 think, is noteworthy because effectively what that means is,

1 people are surprised that almost 6,000 people deserve that much
2 time. They're all in prison. They've been sentenced to life
3 sentences, and therefore what's the big deal.

4 Well, this is really the only place where there's
5 going to be any exchange of views here.

6 I appreciate and respect the fact that there are
7 many members of the prosecutorial branch of our government
8 present, a number of letters have come in from the district
9 attorneys throughout the state.

10 But when I juxtapose that with some of the other
11 lawyers who come in, and they are the ones that represent the
12 lifers, there is a little disconnect there because no one in law
13 enforcement is at risk. And everybody to a person who came in
14 to speak on behalf of the lifer community, they spoke with
15 trepidation because they are at risk. And they're not at risk
16 for their own careers and reputations. They're at risk for
17 their clients.

18 So, I personally weigh that very carefully.

19 This will be my last lifer hearing. There'll be
20 somebody else sitting here, doing this job the next time we have
21 people come forward. That probably will be well received by
22 some of you.

23 But we can't sit in on all these hearings. Some
24 people have suggested, well, you ought to go and sit in, and
25 listen, and all that.

26 We would never do anything -- I know we don't do
27 much -- but we would never get anything done if that were the
28 standard: You had to go out and climb. Like we had the guy

1 here, some fool that climbed on the top of a bridge to see if
2 the welds were okay. He shouldn't have gotten boots; he should
3 have made a novena.

4 I'm not going to go do his job and find out if
5 he's doing a good thing. We have to rely upon other people.

6 So what we hear, what is said, the complaints
7 that are registered, the praise that is given, all constitute
8 the body upon which we make a decision.

9 There has also been much made of comments that I,
10 in particular, have made about the need for diversity.

11 Just because there have been comments made that
12 there are too many law enforcement people is not to say that
13 there is no value in having them.

14 It's quite a different question, however, if you
15 look at people who should be in the practice of disciplines and
16 also constitute an ability to evaluate the fundamental question,
17 and that is: Are these individuals a risk to reentering
18 society?

19 And so, as much as you would need to have ethnic
20 diversity and gender diversity, we really need to have a whole
21 spectrum evaluation of that question and have somebody who says,
22 "I saw. I prosecuted the trial of this individual. He should
23 never get out," along with someone else who says, "These are the
24 things that have happened in the interim, and these are factors
25 to consider that I believe have been mitigating."

26 I've been nonplussed, frankly, about people who
27 were in wheelchairs that somehow are a danger to society. I
28 mean, I came first-hand recently with somebody who was a danger

1 to society. But I'd have had a much different view if that
2 person was in a wheelchair. I would have seen him coming
3 faster, for one thing.

4 So, there are things that just don't compute with
5 me.

6 This is not an attack on law enforcement. We all
7 respect very much the work that's being done.

8 I also do not want to minimize the trauma and the
9 permanent change in the life of a victim, a victim's family,
10 someone who has lost a loved one. I don't want to minimize that
11 at all.

12 And I respect those of you from the district
13 attorney community in particular who tend over the years to
14 continue to make sure that those victims and their families are
15 represented. That's not a question.

16 We have the worst Corrections system. I think it
17 would have to be, given how large it is, how big the task is,
18 how complicated it is. It's got to be one of the worst, but one
19 of the most difficult.

20 So, this is just a piece of that, but it is a
21 piece that very few people respect. And I think we have to
22 therefore give it our attention.

23 I am also mindful that recently the President of
24 the Correctional Officers Union did something that I thought we
25 were supposed to be doing when we decided that rehabilitation is
26 an equal part of justice and corrections. And he took some
27 young man on parole who was working his way back into society, a
28 kid that had a life where nobody that I know would want to be

1 trading places with him. And he has been criticized by people
2 because he has reached out in his association to help this kid.

3 And it just shows that there's a fundamental
4 flaw. And he's been criticized by people who are also in the
5 same business of trying to keep incarcerated and rehabilitate
6 those who are in prison.

7 So, I sit here this afternoon in a rather
8 confused state of mind, but not confused enough to tell you that
9 there are troubling things that have come up. Troubling enough
10 for me to recommend that both Ms. Eng and Mr. Martinez not be
11 confirmed. I voted, in fact, for three of you on previous
12 occasions, but I have been disturbed.

13 I don't want to make this a way of evaluating
14 people generally, but only giving two out of 535 releases to me
15 is extraordinary.

16 I also have been disturbed by the idea that you
17 had an inmate -- and this stuff is all going to be hearsay --
18 but that was troubling.

19 Ms. Eng, I was disturbed by the general idea that
20 you can sit there and not know what Battered Woman's Syndrome is
21 or what's been happening in the area of battered women.

22 So, I am going to recommend that this body not
23 confirm those two.

24 And I will recommend the support of Ms. Bryson
25 and Mr. Doyle. I think Mr. Doyle has come to his position, and
26 people have been very responsive by both background and
27 temperament.

28 So, that's going to be the recommendation. This

1 is for vote only, but it's not to preclude any discussion by
2 Members of the dais.

3 Anyone who wants to say anything may do so.

4 SENATOR BATTIN: Thank you, Mr. Chairman.

5 I certainly want to vote on them individually.

6 CHAIRMAN PERATA: Yes, of course.

7 SENATOR BATTIN: I'm sorry that you don't think
8 that two of the members are worthy of reappointment. I know
9 from the testimony that we heard, it was remarkable how well
10 they've done their jobs and how much support that they had.

11 Especially, I think that the hearsay, back and
12 forth, on the whole Edward Martinez and Ms. Eng about -- if I
13 get this right -- it was: My client told me he overheard them
14 talking through a wall.

15 There should be no reason whatsoever that you
16 would make a decision based on something like that. But
17 nevertheless, the majority is the way the majority is on that.

18 I think that we owe both MS. Eng and Mr. Martinez
19 a debt of gratitude. Like you said, this is one of the worst
20 jobs there is. I have gone to hearings and watched, and it
21 really is a grind.

22 I've got friends on the board, and I know that
23 they're getting to travel to all the glamour spots in
24 California, like Blythe in Imperial County -- and I can say that
25 because I represented them -- that they're working every day of
26 the week, and they're dealing with some tough issues.

27 And remember, more than likely the person that
28 they're talking to had murdered somebody, and that kind of wears

1 you out if you do that day after day.

2 So, I don't agree with your decision. I would be
3 happy to vote for all four of them.

4 CHAIRMAN PERATA: Okay.

5 On Sandra Bryson, call the roll.

6 SECRETARY WEBB: Cedillo.

7 SENATOR CEDILLO: Aye.

8 SECRETARY WEBB: Cedillo Aye. Dutton.

9 SENATOR DUTTON: Aye.

10 SECRETARY WEBB: Dutton Aye. Padilla.

11 SENATOR PADILLA: Aye.

12 SECRETARY WEBB: Padilla Aye. Battin.

13 SENATOR BATTIN: Aye.

14 SECRETARY WEBB: Battin Aye. Perata.

15 CHAIRMAN PERATA: Aye.

16 SECRETARY WEBB: Perata Aye. Five to zero.

17 CHAIRMAN PERATA: Five-zero.

18 Mr. Doyle.

19 SECRETARY WEBB: Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Dutton.

22 SENATOR DUTTON: Aye.

23 SECRETARY WEBB: Dutton Aye. Padilla.

24 SENATOR PADILLA: Aye.

25 SECRETARY WEBB: Padilla Aye. Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.
2 CHAIRMAN PERATA: On Ms. Eng, call the roll.
3 SECRETARY WEBB: Cedillo.
4 SENATOR CEDILLO: No.
5 SECRETARY WEBB: Cedillo No. Dutton.
6 SENATOR DUTTON: Aye.
7 SECRETARY WEBB: Dutton Aye. Padilla.
8 SENATOR PADILLA: No.
9 SECRETARY WEBB: Padilla No. Battin.
10 SENATOR BATTIN: Aye.
11 SECRETARY WEBB: Battin Aye. Perata.
12 CHAIRMAN PERATA: No.
13 SECRETARY WEBB: Perata No. Two to three.
14 CHAIRMAN PERATA: Two-three.
15 And Mr. Martinez.
16 SECRETARY WEBB: Cedillo.
17 SENATOR CEDILLO: No.
18 SECRETARY WEBB: Cedillo No. Dutton.
19 SENATOR DUTTON: Aye.
20 SECRETARY WEBB: Dutton Aye. Padilla.
21 SENATOR PADILLA: No.
22 SECRETARY WEBB: Padilla No. Battin.
23 SENATOR BATTIN: Aye.
24 SECRETARY WEBB: Battin Aye. Perata.
25 CHAIRMAN PERATA: No.
26 SECRETARY WEBB: Perata No. Two to three.
27 CHAIRMAN PERATA: Two-three.
28 And again, my thanks for everybody who has

1 participated here. I'm sure that we'll all see you again.

2 I do join Senator Battin in thanking those of you
3 who have served. I know it's not easy.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 5:00 P.M.]

8 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER

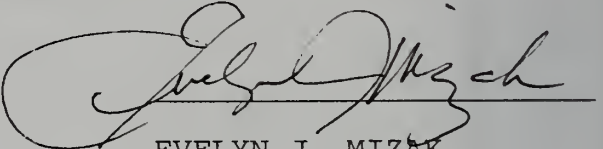
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

30th day of June, 2008.


EVELYN J. MIZAK
Shorthand Reporter

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APPENDIX

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
1515 Clay Street, 17th Floor
Oakland, CA 94612
(510) 286-7100

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603



June 11, 2008

Senator Don Perata
c/o Nettie Sabelhaus
Chairman, Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Dear Chairman Perata,

This letter contains responses to the questions in your May 21 letter. Please let me know if I can provide any further information prior to my confirmation hearing on June 25. I'm also including an updated Form 700, as requested.

1. Although you were appointed administrative director on October 12, 2007, you have served as the acting director since 2005. Please describe your most significant accomplishments since assuming the position of acting director.

As Administrative Director, I've tried to make sure the focus of the system remains on providing prompt, effective medical treatment and getting injured workers back to the job quickly. In order to do this, I've worked with DWC staff to promulgate regulations for presumptively correct treatment guidelines that are much more expansive than the ACOEM treatment guidelines. We've also done regulations to add acupuncture guidelines, and are in the process of promulgating guidelines for chronic pain. The more treatment that can be included in the presumptively correct treatment guidelines, the faster and easier it is to get treatment approved for injured workers.

Despite improving the treatment guidelines, there are still treatments that go through a somewhat protracted utilization review process. One of my first acts as Administrative Director was to completely revamp the proposed utilization review penalty guidelines to provide for constant monitoring and penalties of as much as \$50,000. DWC is now including utilization review in every routine audit of claims administrators and is specifically auditing utilization review companies at least once every three years. We're posting the audit results for the utilization review companies on our website to assist claims administrators in choosing which company they want to use.

Of course, having treatment guidelines is of no use if an injured worker can't find a doctor who is willing to treat them. In order to ensure access to physicians, I implemented a 23% raise in reimbursement levels for the primary care physicians in the system. At the same time, I promulgated regulations that closed a loophole on repackaged drug pricing.

It is my personal goal to provide greater access to people and groups in need of DWC services and to monitor effects of reforms and create changes where needed. Under my guidance, the division has ramped up its Spanish-language outreach and, in 2007 alone, conducted 19 Spanish-language workshops in communities around the state during evening hours, when it's easiest for working people to attend. DWC also consistently works with other DIR divisions such as Cal/OSHA and the labor commissioner's office to ensure that workers who are most vulnerable to injury, such as those in agriculture and residential construction, know their rights and have a place to come for assistance. We are currently working with Cal/OSHA to conduct outreach for workers vulnerable to heat illness in the coming summer months.

We've done a lot of work on our Web site to make it more user-friendly, organizing content by user group, such as injured workers and employers, so that people who come to the site can find what they need without having to understand the division's organizational structure. And we have a policy of translating all of our injured worker materials into Spanish. Outside of Spanish, DWC also has language assistance available to other non-English speaking workers, so they can be assisted in their own language.

I am particularly proud of the work I've done with DWC's research staff and staff at the Employment Development Department to create an arrangement to share data, thereby allowing DWC to conduct detailed wage loss and return to work studies that form the empirical basis for changes to the permanent disability rating schedule.

2. Please state, in order of priority, your goals and objectives for DWC and the time frames within which you would expect to achieve them.

1. Revise the Permanent Disability Rating Schedule to reflect the latest empirical data. Based on that data, the new schedule will provide a higher level of benefits for injured workers. The new regulations are expected to be in place by January 1, 2009.
2. Through an advisory committee comprised of business and labor representatives, injured workers, and legislative staff to revise return to work procedures in both statute and regulations and improve the usability of the Supplemental Job Displacement Benefit to make it a meaningful benefit for more workers.
3. Oversee the "go-live" of the Electronic Adjudication Management System (EAMS) scheduled for August 25, 2008 for DWC's internal users. External participants will start to use EAMS in November.
4. Complete regulations for the Qualified Medical Evaluator (QME) process for injured workers with attorneys—the last major set of regulations related to the 2004 reforms. These regulations will hold QMEs to a higher standard in regard to competency and timeliness to ensure that injured workers' cases are not delayed. The regulations are expected to be finalized by October 2008.

3. Since your appointment as the acting director, how many new positions, by job classification and function, have been added to DWC? Does the division now have sufficient staff and resources to handle its workload?

For fiscal year 2008/09, DWC will have 1159.3 authorized positions, down from 1170.3 authorized positions when I became acting director in October 2005. The reduction is due to positions that were limited term and expired, position abolishment, and positions loaned to the Administration Division within the Department of Industrial Relations to assist with personnel, information systems, and other workload associated with DWC.

During General Fund budget reductions between the years 2000 and 2003, DWC was reduced by 134 positions. Once user funding was approved for DWC beginning in fiscal year 2004/05, DWC was augmented with 202 new positions. With so many new positions to fill all at once, DWC initially had a vacancy rate of around 20%.

DWC did not receive any new positions in fiscal year 2005/06. In fiscal year 2006/07, DWC received one new Staff Service Analyst position for the DWC Rehabilitation and Return to Work Unit. Also in fiscal year 2006/07, DWC received two Associate Governmental Program Analyst positions which were placed in the Department of Industrial Relations' Facilities Unit to assist DWC with its various facilities-related issues. In fiscal year 2007/08, DWC received one Labor Relations Specialist I position that was placed in the Department of Industrial Relations' Personnel Unit to assist DWC in various issues related to collective bargaining.

DWC currently has only a 5% staffing vacancy rate. Since user funding was approved, DWC has been able to fill positions and keep them filled, which has greatly improved DWC's ability to accomplish its mission of mitigating the adverse impacts of industrial injuries on employers and injured workers. I believe that DWC's current level of staffing is sufficient to allow DWC to meet the needs of injured workers and employers.

4. In your view, since enactment of the recent workers' compensation law reforms, what are the greatest difficulties faced by injured workers as they seek compensation? Please discuss any data or research that supports your answer.

Understanding the system: Putting aside the recent reforms for the moment, I'd like to start by acknowledging that over the years the system has grown more and more complex and hard for injured workers to understand. Even knowing who to call if you have a question can be a challenge. DWC continually sees demonstrations of this in our own interactions with injured workers. DWC has tried to remedy this situation by implementing a public outreach campaign for its Information & Assistance Unit, which assists injured workers who don't have attorneys. DWC also continues to work to simplify information and make it available in the language that is easiest for people to understand. For example, the division recently completed work on a benefit notice manual for claims administrators, which consolidates and provides instructions for the

over 30 required notices for various benefits sent to injured workers, and supplies examples of the notices in both English and Spanish.

Returning to work: Prior to the reforms, injured workers could receive an award of permanent disability simply because they were given work restrictions by a doctor. However, under the new disability rating criteria enacted by the Legislature, there must be objective medical evidence of physical impairment in order to receive permanent disability benefits. Because fewer workers meet these objective criteria, fewer workers are receiving PD awards. Without a PD award, the injured worker does not qualify for the Supplemental Job Displacement Benefit if their employer does not make them an offer to return to work.

According to RAND Corporation studies, both employers and injured workers benefit when employees return to work quickly following a workplace injury. Injured workers recover from their injuries faster and suffer less wage loss and employers maintain the value of the investment they've made in their employees by bringing them back to the job as soon as medically possible. The Supplemental Job Displacement Benefit—a voucher that helps pay for an injured worker's educational retraining or skill enhancement, or both, at state-approved or state-accredited schools—is tied to the PD award: the greater the level of disability, the higher the amount of the voucher.

The Supplemental Job Displacement Benefit, as currently in statute, is limited in its usefulness to injured workers because it can only be used for formal education at a recognized educational institution. DWC is currently working with an advisory group of injured workers, representatives from business and labor, and legislative staff to determine how to best improve the voucher system to provide a greater service to injured workers seeking to re-enter the workforce.

Waiting for medical benefits: Delays caused by utilization review can cause injured workers to wait between 5 and 14 days for treatment to be approved when their doctor requests treatment authorization. Some injured workers are waiting beyond the period required by statute. Over time, those delays can accumulate, causing significant delays that erode the worker's 104 weeks of temporary disability benefits.

5. Please provide an update on the medical treatment utilization schedule. What is its status?

To help employers provide prompt and effective treatment, we have to think about the medical treatment utilization schedule (MTUS) as a living document that will be regularly updated to include the best evidence-based guidelines available.

The Legislature, in 2003, charged the DWC administrative director (AD) with adopting an MTUS that would be presumed correct on the issue of extent and scope of medical treatment, and made the American College of Occupational and Environmental Medicine

Practice Guidelines, 2nd Edition, (ACOEM) the standard until the adoption of an MTUS by the AD.

DWC permanently adopted its first iteration of the MTUS, which included the ACOEM treatment guidelines, along with guidelines for acupuncture adopted from Colorado's treatment guidelines, on June 15, 2007. That set of guidelines has been presumptively correct since June. The treatment guidelines stress functional improvement—the injured worker should show improvement in performing activities of daily living, a decrease in work restrictions, and a reduction in the need for continuing medical treatment.

DWC's next iteration of the MTUS is pending in the regulatory process. This rulemaking will restructure the treatment guidelines, which will allow for easier updates in the future, and will add a new section for postsurgical physical medicine, revise the chronic pain section and update the elbow section.

To ensure California's injured workers have access to effective and appropriate treatment, the MTUS regulations also created a medical evidence evaluation advisory committee (MEEAC), which meets regularly to review the latest medical evidence and advise the division about incorporating new evidence-based guidelines into its MTUS. The MEEAC appointees represent a wide variety of specialties, with experience in fields such as orthopedic surgery, occupational medicine, physical therapy, chiropractic and acupuncture. The committee also includes providers whose breadth of experience encompasses everything from family practice in a rural setting to neurosurgery at one of the nation's top hospitals, ensuring the division is advised on crafting appropriate guidelines for workers across a spectrum of injuries and circumstances.

The DWC's vision for California's treatment guidelines includes continuous review and incorporation of best practices, which is why it established the MEEAC. The MEEAC began work to supplement California's medical treatment guidelines at its first meeting in March of 2007 and continues to meet to advise the DWC medical director on treatment guideline issues. After modifying Colorado's acupuncture guideline, the committee reviewed and recommended adoption of ACOEM's new elbow chapter. The MEEAC then counseled the medical director to use the Official Disability Guideline (ODG) as the basis for the chronic pain and postsurgical physical medicine sections of its MTUS.

The MEEAC additionally developed a new introduction to the chronic pain treatment guidelines that explains the latest biopsychosocial thinking on chronic pain. The guidelines include recommendations on close to 200 treatments. Some examples of treatments for chronic pain that are not currently covered in the second edition of ACOEM, but will be in the MTUS, include:

- Drugs, including antidepressants and anti-inflammatory medications
- Detailed information on chronic multi-disciplinary pain programs
- Implantable drug delivery systems
- Biofeedback
- Spinal cord stimulators and other electrotherapies.

Even while this extensive guideline is going through the regulatory process, the MEEAC continues to meet to consider other guidelines. Currently, the MEEAC is working to update the guidelines for the low back. The MEEAC and DWC staff have reviewed six potential guidelines and selected ODG as the starting point.

6. What data are you collecting to monitor and ensure that the medical treatment utilization schedule and medical provider networks are providing injured workers appropriate medical care in a timely manner?

The Division has four main vehicles for monitoring and ensuring the appropriateness and timeliness of medical care for injured workers:

1. The Medical Access Study, conducted pursuant to LC Section 5307.2, which was added to the Labor Code in 2003 by SB 228
2. Medical Provider Network (MPN) complaint monitoring program
3. Utilization review complaint monitoring program
4. Investigations of utilization review organizations and claim administrators regarding compliance with existing utilization review laws and regulations

Medical Access Study

Labor Code section 5307.2 requires that the administrative director contract with a qualified research organization to conduct an annual study of the adequacy of injured workers' access to quality health care and health care products. The first study was conducted by the UCLA Center for Health Policy Research and was released in February 2007. The second study is being conducted by the University of Washington, Seattle. Data collection began April 29 and will be completed late summer 2008.

The Medical Access Study includes two main components: a telephone survey of a representative random sample of injured workers and a mail survey of a stratified random sample of medical providers classified as "physicians" under the Labor Code (medical doctors, osteopathic physicians, chiropractors, acupuncturists, podiatrists, and psychologists).

The injured worker survey is designed to measure the appropriateness and timeliness of care in a number of ways. Since it is not possible to directly measure whether the care received was "appropriate" through an injured worker survey, proxy measures of appropriateness were used, including the following:

1. *Patient satisfaction:* Although satisfaction with care is not proof of appropriate quality care, it implies that the care received was timely and appropriate. Injured workers were therefore asked about satisfaction with the overall care received, reasons for dissatisfaction with overall care, and satisfaction with their main provider. They were also asked to assess the quality of care they received.

2. *Return to work*: Early and sustained return to work is one of the hallmark indicators of timely, quality care, assuming parity among other factors likely to affect work-related time loss. Injured workers were therefore asked if they had returned to work, whether they were working at the time of injury, the timing of the first return to work (2008 survey only), whether additional lost time occurred after the first return to work (2008 survey only) and the total number of workdays lost.
3. *Recovery from injury*: This includes self-assessed recovery from the injury and how much the injury affects the worker's life at the time of interview.
4. *Occupational health behaviors of main provider*: Injured workers whose physicians engage in behaviors associated with occupational health best practices are more likely to have better health and return to work outcomes. These behaviors include asking the worker about the demands of his or her job, talking to the worker about how to avoid re-injury, and talking to the worker about work status and return to work.
5. *Timeliness of care*: Timeliness was assessed by asking the worker about the timing of the first medical visit for the injury, delays in receiving care, problems obtaining recommended specialty care, and problems obtaining recommended physical or occupational therapy.

Medical Provider Network (MPN) complaint monitoring program

Currently over 60% of treatment in the workers' compensation system is being delivered by doctors in MPNs. The division has received relatively few complaints in relation to the number of claims handled, but the more we understand about the value of provider networks, and the more treatment is handled through these networks, the more we see how important getting this right is.

MPN complaints come to DWC from applicant attorneys, injured workers, medical providers and through interdepartmental personnel such as the Information and Assistance Unit via phone calls, emails and letters.

MPN Complaints

- 136 complaints have been filed with DWC
- 67 complaints received since January 2007

Main complaints from workers

- Don't know they're covered by an MPN
- Not getting the complete list of medical providers when they request it
- Provider list not updated with current contact information or contains providers who no longer treat workers' compensation patients, resulting in injured workers having to make numerous phone calls to find a physician to treat them

- Confusion over the MPN contact phone number and the third party phone number listed at the bottom of the Web sites—passwords on the sites

Main complaints from providers:

- Lack of awareness of their contractual obligation to provide treatment under the MPN
- Lack of communication from the MPN if they are terminated from the MPN—for example, finding out indirectly when a bill is denied or they are not given authorization to provide treatment
- Lack of MPN providers in rural areas

The complaint investigation process begins immediately upon receipt of a valid MPN complaint, typically within 24-48 hours of receipt. The MPN liaisons are contacted and it usually takes about 2-5 days to get a response from the MPN liaison concerning the allegations and or for the situation to be resolved. In the majority of complaints, once the liaison becomes aware of a problem there is speedy intervention and the employee is contacted and the problem resolved.

Utilization review (UR) complaint monitoring program

Utilization review is the process used by claims administrators to review treatment and determine whether it is medically necessary, based on medical treatment guidelines. Although claims adjusters can approve requests for treatment, only physicians may delay or deny treatment.

DWC began hearing anecdotal information regarding problems with UR soon after the process began. In response, DWC developed a form and placed it on our website. The form is not mandatory, but it directs an individual through the information DWC needs in order to do an investigation. Since July 2006, DWC has received a total of 1,202 complaints. Of these 66 were found to be valid complaints. Many of the complaints address components of the UR review process that deal with practices allowed by existing law, but which they may have concerns about, such as use of out-of-state physicians or review by a non-specialty physician. DWC's Medical Director reviews each complaint and, if further investigation is warranted, she usually places a phone call to the medical director of the UR company. This physician-to-physician communication has proven to be very effective in quickly resolving issues.

Investigations of utilization review organizations and claim administrators

DWC's utilization review penalty regulations set penalties for failure to follow UR rules. In November 2007 DWC began including sampling UR decisions in the routine audits of claims administrators. Per statute, the audits are done at least once every five years, but DWC can do a targeted audit based on complaints at any time. To date, DWC has

included UR reviews in 34 routine audits of claims administrators. Within those, there are 4 companies with potentially failing scores in their UR practices.

Utilization review companies will be audited at least once every 3 years. Since the major decisions are being made at the UR companies, we want to audit them more frequently. So far the main issues have to do with paperwork requirements and we hope some of the forms we are revising, which include a request for authorization of treatment, will help. Sometimes it is difficult for the claims adjuster to identify a document as being a request for treatment, which can result in the request being ignored or having an untimely response. DWC is creating a specific form that will be mandatory for all treatment requests in order to eliminate ambiguity in regard to whether there has been a request for treatment.

DWC has completed the first round of three utilization review company audits and is working on the second round. So far, we've found significant problems only in one of the utilization review companies. There is a great incentive for companies to have clean audits, since the results will be posted on DWC's website for review by claims administrators who are comparing UR companies and deciding where to do business.

7. If the May 2007 study conducted by the DWC showed that permanently disabled workers are having their benefits cut, on average, by over 50%, is a 16% increase in the proposed PDRS fair and adequate?

The reduction in average permanent disability benefits stems from several factors, not just the imposition of the 2005 PDRS. The reduction in weeks payable, changes to apportionment statutes, and use of the AMA Guides to set impairment levels also contribute to the lower benefit amounts.

Although the proposed PDRS results in an overall 16% increase in benefits, there is a great deal of variation among benefits for injuries to specific parts of the body, consistent with the latest empirical data. For example, although PD payments for psychiatric injuries will stay level, PD payments for back injuries will increase by 26% and PD payments for ankle injuries will increase by 40%.

The proposed 2009 PDRS allocates PD payments between injuries to specific parts of the body to reflect the updated wage loss patterns for those parts of the body, while still resulting in an overall increase in PD benefits estimated at somewhere between \$200 and \$400 million.

Under the 2005 PDRS, only about 1% of injured workers received the highest possible Future Earning Capacity (FEC) adjustment of 1.4. Under the proposed 2009 PDRS, over 40% of injured workers will receive the highest possible adjustment of 1.5. In addition, younger injured workers will no longer have their PD awards reduced due to their age.

Upward age adjustments will be applied to workers under age 22 and over age 52, which represents about 30% of injured workers with permanent disability.

8. Do you believe that the empirical data compiled by the DWC justifies more than a 16% increase for injured workers? If so, why? If not, why not?

DWC has studied and continues its ongoing study of the available data for evaluating the impact of the reforms on wage loss and permanent disability payments. While we do not yet have the data we most need—three years of wage loss information for people injured after the reforms and who received all their benefits under the reformed system—we've worked with the data we do have to make adjustments, as we have always been committed to doing. We will have that data beginning in 2009 and will analyze it then. What we are doing here is taking wage loss information for people injured in 2003 and 2004 and applying average ratings under the 2005 PDRS to those cases to make assumptions about wage loss patterns for injuries to each part of the body.

We know that return to work has improved significantly since the reforms, and return to work significantly reduces wage loss. Overall, return to work has improved by 5%, with variations based on age and part of the body injured. The return to work advisory committee is working to streamline the return to work process even more, which may further improve return to work statistics.

Given analysis of the empirical data available to date, I believe that the proposed 2009 PDRS is reasonable and justified.

9. Is your department continuing to compile data that could lead to more alterations to the PDRS in this calendar year? If not, when do you anticipate having enough empirical data to adjust the PDRS again?

Through constant monitoring, DWC will continuously analyze the performance of the PDRS, updating both the return to work and wage loss information. DWC expects to release new information on a quarterly basis. The "ideal" data that DWC has been waiting for—three-year wage loss for workers injured after 2005—will become available during 2009.

Our experience in the regulatory processes is that many proposed regulations undergo significant changes after the initial 45 day comment period and the public hearings. The utilization review penalties, for example, were completely rewritten based on comments received. We are currently in the initial 45-day comment period on the PDRS regulations and will be taking public testimony at hearings in Los Angeles and Oakland on July 21 and 22.

10. What, if any, measures do you recommend to drive down cost containment and medical-legal evaluation costs?

The QME regulations I'm proposing are currently in the regulatory process. Changes in the reforms requiring the parties to either agree to an AME or use the QME process prevent doctor shopping for numerous opinions, thereby reducing medical-legal costs. The regulations will reduce amounts spent on cost containment and medical-legal evaluation costs in a number of ways. Primarily, time equals money in workers' compensation cases—the longer the case remains open and unresolved, the more it will ultimately cost. The QME regulations will speed up the medical-legal process by:

- Requiring QMEs to sit for depositions within 120 days of the request. Currently some QMEs set depositions as much as a year into the future, significantly delaying case resolution.
- Requiring QMEs to conduct depositions at the same location where they examined the patient. Currently, traveling QMEs tell the parties they only do depositions at their main office, which results in significant loss expenses for the parties to travel to the doctor's office—which may be hundreds of miles away.
- Allowing the parties to request QMEs in more than one specialty, where it's appropriate to the claim. This will reduce the time delay that occurs when the QME fails to send the patient for consultations in other specialties.
- Issuing QME panels for workers who are represented by an attorney within 30 days of the request.
- Requiring QMEs to use evidence-based, peer-reviewed, nationally recognized treatment guidelines in their recommendations for future medical treatment. This should reduce the number of subsequent depositions needed to clarify treatment recommendations.

DWC has already increased the hourly rate paid for medical-legal reports by 25% in order to attract and retain competent physicians for medical-legal examinations. DWC will continue to monitor the availability of physicians to do medical-legal reports to make sure that cases are not delayed due to a lack of available physicians. DWC is actively recruiting physicians to take the QME examination and become certified QMEs.

Another area where cost containment expenses could be reduced is in the area of utilization review. Many utilization review organizations seem to have convinced the claims administrators that every single request for treatment should go through a formal review process with the utilization review organizations. DWC continues to educate claims administrators that treatment approvals should be delegated to the lowest possible level—to the claims adjuster where appropriate. Only a physician can delay or deny treatment, but there's no reason a claims adjuster can't approve routine treatment requests. This would speed up the treatment process and reduce cost containment expenses.

DWC is currently working with a major insurance carrier to set up a pilot program where physicians in one of their MPNs treat patients without having to ask for pre-authorization.

DWC has consistently encouraged claims administrators to be discriminating in which physicians they put into their MPNs, then trust those physicians to use their own judgment in making treatment decisions. This model may be implemented later this year.

Thank you for the opportunity to respond to these issues in advance. Please let me know if I can provide any further information.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Nevans". The signature is fluid and written in dark ink.

Carrie Nevans
Administrative Director
Division of Workers' Compensation

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

1515 CLAY STREET, SUITE 1901

OAKLAND, CA 94612

(510) 286-7000 FAX: (510) 286-7037

ADDRESS REPLY TO:
PO BOX 420603
SAN FRANCISCO 94142-0603

May 22, 2008

Senate Rules Committee

MAY 29 2008

Appointments

Chairman Don Perata
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Dear Chairman Perata:

Thank you for your letter of May 1, 2008 and the opportunity to provide you with written answers to the questions you have asked about me and the Cal/OSHA Program. I will appear at the hearing set for June 25, 2008 at 1:30 p.m., and look forward to the opportunity to address you and the other members of the Senate Rules Committee in person. I have included with this letter an updated Form 700 Statement of Economic Interest as requested, as well as a table directed to your question regarding penalties assessed by DOSH.

My responses to your questions are as follows:

Roles and Responsibilities

The Division of Occupational Safety and Health (DOSH or Cal/OSHA) is responsible for enforcing occupational safety and health standards, investigating the causes of occupational deaths and injuries, and helping employers maintain safe and healthy working conditions.

1. *Prior to your appointment as chief last October, you served as acting chief since 2003. What do you consider your most significant accomplishment during this period?*

What I consider my most significant accomplishment is something I have to give credit to Governor Schwarzenegger for helping me to achieve. At the Governor's request, the Occupational Safety and Health Standards Board was asked to adopt an emergency temporary standard to address heat illness prevention for outdoor workers in 2005. Under my direction, Cal/OSHA worked with the Standards Board to adopt an emergency temporary standard before the end of that year and a permanent version of the same standard in 2006. The issue of adopting a standard to address heat illness prevention had been brought to the attention of the Standards Board and Cal/OSHA by petition for more than 20 years without being successfully addressed by rulemaking.

This standard is the first of its kind in the nation and has helped to create a sea change in awareness about heat illness and the simple steps that can be taken to prevent it. However, the efforts to address heat illness have not stopped there. The adoption of the standard, the substantial presence of the issue statewide, and the attention focused on it by the media created a

unique opportunity to build a special emphasis on enforcement and informational assistance campaigns around the new standard. Cal/OSHA has made it a priority to partner with industry and labor organizations to bring this about.

In addition, Cal/OSHA initiated an ongoing study to attempt to evaluate the effectiveness of the standard since its initial adoption. Each year we have gathered data from the heat illness enforcement files and debriefed the inspectors with questionnaires to determine which requirements of the standard are most likely to be violated, and what factors have been most implicated in causing fatalities and serious heat illnesses.

One telling trend we have seen to date is the reduction in injuries that has occurred since 2005. That summer, there were 12 deaths related to heat illness. In summer 2006, the number of fatalities dropped to 8, and last summer the number was one. While we will need to collect data for several more years to make conclusive judgments about the impact of the new standard together with the field presence we have built around it, the current trend suggests that there has been a significant impact.

2. *What are your current goals for the division, and how will you measure progress in achieving them?*

My primary goal for Cal/OSHA is for it to continue to lead the nation in addressing occupational safety and health issues. The single most important tool available to achieve this is dialog. The state is fortunate to have forward thinking leaders representing both labor and management, and I have seen many indications that broad consensus can be built around developing measures that result in genuine improvements in workplace safety.

One area around which consensus can be built is measuring the actual impact Cal/OSHA has on compliance, as well as the ultimate bottom line of the rates of fatalities, injuries, and illnesses. Currently, Cal/OSHA's data collection is tied to the federal OSHA Integrated Management Information System (IMIS), and OSHA uses this system to evaluate the effectiveness of all state plan programs. However, the items measured do not yield much information on the agency's overall effectiveness in bringing about compliance or reductions in fatalities and injuries. We need to put measures into place that will provide us with information on how effectively different approaches to bringing about compliance actually make lasting changes in workplace safety culture and fatality and injury rates.

In addition to the heat illness prevention study I mentioned above, we have put together a pilot program in the Cal/OSHA High Hazard Unit which will attempt to measure the short and long term impact of enforcement and consultative interactions with individual employers as well as industry segments targeted for special emphasis. We will do this by making return visits at specific intervals to sites previously visited, as well as to sites not previously visited but still within a previously targeted industry segment. This will provide data that should tell us how much of an impact we have had on individual businesses we have visited as well as how much we have induced change in the overall industry segments we have targeted.

In general, I believe this emphasis on the bottom line of actual compliance is the key to securing broad support from industry and labor for the Cal/OSHA Program. For example, I have never in my career seen as much interest as I currently see from the business side of the aisle in effective enforcement as a tool for leveling the playing field for compliant employers. With the heat illness prevention standard, we have backed up new requirements for employers with the enforcement presence needed to make sure that employers who don't follow the rules are not allowed to put compliant employers at a disadvantage. We need to ensure that all new requirements come with the enforcement and compliance assistance presence needed to make them a reality.

This, of course, is always a challenge in light of the fact that all government agencies must work within realistic resource limits. For this reason, we must continually engage in efforts to partner with organizations that have significant resources to add to the mix in terms of using their various networks to distribute information. And we must continually evaluate what the most effective tools to achieve compliance are. There will always be a bottom line need for traditional enforcement, but other tools exist to enlist the voluntary efforts of businesses that want to ensure they have safe working environments and can be helped to achieve this with information and other forms of assistance. In general, these non-coercive tools are far less expensive than traditional enforcement and should be used whenever enforcement is not necessary.

Finally, effective targeting is essential. We have partnered with the Labor and Workforce Development Agency and others to participate in the Economic Employment Enforcement Coalition (EEEC). The most important imperative this effort illustrates is the need to reach the most difficult to penetrate and non-compliant industries in the state – those that invariably have higher concentrations of workers who are non-English speaking, and highly vulnerable to being taken advantage of and subjected to unsafe working conditions. It must always be a top priority of Cal/OSHA to find ways like this to reach the most underserved workers in the state.

Discrepancy between Penalties Assessed and Collected

There is a large discrepancy between penalties assessed by DOSH and those collected. You reported in an August 2007 meeting of the California Commission on Health and Safety and Workers' Compensation that this discrepancy is in part attributed to the fact that employers usually appeal their assessments and that for the past seven years employers have been appealing at higher rates than in the entire history of the program.

- 3. Please provide data from the previous five years on dollars assessed prior to appeal, dollar amount remaining after the appeal process, and dollars collected.***

Please see the enclosed table. The table contains four columns of data for the previous five years. The first column on the left shows the total amount of penalties originally assessed for each year. The next column shows the total penalty reductions made to date pursuant to either an Appeals Board decision or a DOSH-initiated settlement. The third column shows the original penalty amount with reductions subtracted from it (i.e., the first column amount minus the second column amount). The fourth column shows the dollars actually collected to date.

Unfortunately, we do not have a database that shows what cases remain pending on appeal, so the table does not contain this information. Because there are still appeals pending for each year, the

final figures on penalty reductions, penalty amounts remaining after reduction, and dollars collected will be different than the figures displayed in the table. Accordingly, when the cases for each year are completely resolved, the totals for penalty reductions will be higher, the amount remaining after reductions will be lower, and the dollars collected will be higher.

These differences become more pronounced as the years become more recent, because the number of unresolved appeals is higher the more recent the year. For the 2003 cases there are very few unresolved appeals, so the differences between the final figures and those in the table will be very slight. However, most appeals are unresolved from the 2007 cases, so the final figures for that year will have the greatest variation from what the table currently shows. Therefore, the best indication of how penalty reductions and dollars collected compare to the original penalty amounts is shown by the data for the 2003 cases.

Diacetyl

In September 2006, DOSH assembled an advisory committee on diacetyl, a chemical used in artificial butter flavor, and other hazardous flavoring chemicals. This was in response to a petition by various labor unions and workplace safety advocates citing studies by the National Institute for Occupational Safety and Health that confirmed the link between exposure to vapors from diacetyl and a debilitating and incurable lung disease, bronchiolitis obliterans. The advisory committee included representatives of state and federal safety and health agencies, occupational health and safety research and advocacy organizations, labor, and industry. The committee met four additional times throughout 2007 to develop proposals for the Cal/OSHA Standards Board.

- 4. Please provide a brief update on this issue, including DOSH consultation, compliance, and inspection activities with the approximately 28 California companies that sell compounded flavors to the food manufacturing industry in California.*

Cal/OSHA will be sending a proposed standard to address diacetyl in the flavor manufacturing and food manufacturing industries to the Occupational Safety and Health Standards Board on May 23, 2008. The Board staff is expected to be making final preparations for noticing the proposed standard during the next two months.

Cal/OSHA's Flavor Industry Safety and Health Evaluation Program (FISHEP) continues to receive cooperation from all of its members which consists of all the flavor manufacturing companies in the state that use diacetyl. The number of employees identified in California as having fixed obstructive lung disease due to diacetyl exposure remains at nine, as it has for approximately two years. Our top priority has been to prevent more employees from developing this debilitating and largely irreversible disease, and the biggest challenge has been to medically follow, in coordination with the Department of Public Health, the approximately 46 employees the program identified as possibly at risk due to pulmonary abnormalities and in need of ongoing medical surveillance to make sure they will not go on to develop this disease.

As mentioned above, FISHEP consists entirely of flavor manufacturing companies, which we believe are the most at risk to have employees with potentially hazardous exposure to diacetyl. However, we are actively seeking food manufacturing companies to participate. And to that end, the program has invited General Mills into the program. One site visit has been made to the company's City of Commerce facility, and the company's final decision on whether it will fully participate is being awaited. We are continuing to look for other food manufacturers to participate as well.

Permissible Exposure Levels

Last year DOSH established a new process for setting permissible exposure limits for airborne chemicals, and named a panel of experts to a Health Expert Advisory Committee.

5. *Please describe the current process for developing new or revised permissible exposure limits. How are substances selected for analysis? How does DOSH ensure public input and transparency of the process?*

The current process, which was developed with the assistance of well-attended advisory committees open to all interested members of the public, consists of three phases: (1) Selection of substances to be considered for revision of an existing permissible exposure limit (PEL) or establishment of a new PEL; (2) evaluation of the health impacts of the substances selected for consideration, including a determination independent of feasibility considerations of what the PEL should be based only on health considerations; and (3) determination of what the lowest level of exposure is that is feasible to achieve.

Each of these phases consists of meetings conducted by Cal/OSHA staff with the participation of staff from the Hazard Evaluation System and Information Service (HESIS) – a unit with the Occupational Health Branch of the Department of Public Health – and staff from the Office of Environmental Health Hazard Assessment. Committee members consist of expert volunteers who are willing to participate.

The process of selection begins by looking to various sources including “threshold limit values” (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH), Workplace Environmental Exposure Levels (WEELs) published by the American Industrial Hygiene Association (AIHA), Recommended Exposure Levels (RELs) developed by the National Institute for Occupational Safety and Health (NIOSH), and information on specific substances developed by the Office of Environmental Health Hazard Assessment (OEHHA) and the U.S. Environmental Protection Agency (EPA). Based on this information review DOSH develops a draft list which includes information on possible health effects associated with each substance. This information is brought to a public advisory meeting and there the discussions center around the severity of health impacts of the listed substances, as well as their prevalence in the workplace. Through discussions at these meetings we attempt to develop consensus on which substances are the most in need of regulation based on a determination of how substantial the impact is likely to be if feasible measures are put into place to limit exposure.

DOSH then develops a "final" tentative list to work from for the Health Expert Advisory Committee process. Substances can be added to or removed from the list, or their priority changed based on new information.

These meetings are all fully open to the public and are very well attended by stakeholders representing labor and management. In general, there is enormous interest in this process and we have had robust public input to date. Some of the measures taken to ensure that the input remains robust include the following:

- (a) Maintenance of an Excel table of email addresses for interested parties that currently includes about 250 names to which meeting notices and reminders are provided;
- (b) Maintenance of information on the Cal/SOHA website consisting of meeting announcements, draft decision template documents for discussion at the meetings, draft agendas, and other documents relevant to issues to be addressed at upcoming meetings. The website also serves as a repository for relevant documents, any of which may be accessed by an interested party;
- (c) An ongoing effort to identify organizations interested in particular substances and willing to actively participate in the meetings.

Nail Salons

In November of last year, the Senate Labor and Industrial Relations Committee held an informational hearing on workplace safety in the nail salon industry in response to the growing concern about the workplace health and safety conditions for the nearly 94,000 nail technicians working in California. Since that time, Cal/OSHA has been meeting with stakeholders concerned with nail salon safety to develop a strategy of outreach, information, and assistance to this industry.

6. *Please describe Cal/OSHA's efforts to date to assist this industry in complying with appropriate health and safety standards.*

At the public hearing entitled "Nail Polish and Product Safety in the Workplace" held on November 15, 2007, by the Senate Committee on Labor and Industrial Relations in San Francisco, I invited attendees concerned about this issue to meet with me and my staff at Cal/OSHA to discuss how Cal/OSHA could better address nail salon safety. As a result, two meetings with stakeholders have been held since that time, on January 11, and February 22.

At the January meeting, members of an organization called the California Healthy Nail Salon Collaborative, which is a coalition of other organizations including the Asian Health Service, the Asian Law Caucus, Asian Communities for Reproductive Justice, and the Northern California Cancer Center, were in attendance. The attendees expressed a desire to see more written safety information developed which can be of practical use to employees, employers, and independent contractors in nail salon work. In addition, they said that they want to begin and maintain an ongoing and coordinated dialog with agencies that have the power to regulate nail salon safety.

It was agreed that, in preparation for the meeting held in February, Cal/OSHA staff would gather together and review all existing publications on nail salon safety so that the group could decide what gaps need to be filled with a new publication. Cal/OSHA also agreed to invite representatives of the Board of Cosmetology to the February meeting so that the group could discuss the different ways in which the two agencies address nail salon safety.

That meeting was attended by the same group as well as Kristy Underwood, Executive Officer of the Board of Barbering and Cosmetology (CBBC) and Stacy Meza, Administrative Manager of the CBBC. Also present as observers at these meetings were Alma Perez of the Senate Labor and Industrial Relations Committee, Rona Sherriff of the Senate Office of Research, and Elise Thureau from Senator Migden's Office. At that meeting, Cal/OSHA agreed to develop a publication that will provide specific guidance on nail salon safety and will provide concise, useful information for those who own and work in nail salons. Our work on this publication has already begun.

We were also asked to participate in a community forum on nail salon safety in Oakland on Sunday, April 17, which I personally attended along with a staff member.

We are in the process now of working with the Collaborative to set up a meeting with nail salon owners to invite them to participate in the Cal/OSHA Consultation process. We are hoping that the Collaborative members will help us to explain the process and allay fears about working so closely with a government agency.

Eventually, we may engage in more traditional enforcement efforts, but we believe that we need to develop and disseminate critical information to these businesses in order to have an enforcement presence that will be effective in bringing about compliance.

7. *How can DOSH work with DLSE to assist employers and workers, many of whom have limited English ability, in understanding and complying with labor laws and health and safety standards in order to avoid citations and penalties that threaten the viability of these jobs?*

The critical task now is to develop practical and accessible information that will answer these employers' and workers' questions about how to protect workers from hazards in their workplace and how to comply with applicable labor laws and occupational safety and health standards. Many of the business owners and workers have a limited understanding about how these laws apply to them, and they are in need of materials translated into their language that will answer their specific questions about compliance. In addition to written materials, we are planning to participate with the Collaborative in future forums that will bring more members of the nail salon community out to have their questions answered.

Both divisions are now in the process of working together to do this. We have a unique opportunity to benefit from the Collaborative which can serve as a conduit for us to reach a large number of owners and workers that we could not otherwise reach. We are developing all of these materials in consultation with the Collaborative, and plan to make them available in English, Vietnamese and other languages as needed.

Crane Safety Standards

California law requires Cal/OSHA to set crane safety standards, issue permits, conduct inspections, and certify accredited operators. Nevertheless, recent deadly crane accidents in New York and Florida, anticipated major construction projects, new technology, and engineering and design innovations in crane manufacturing raise the question of whether California's crane safety measures are still adequate to ensure the safety of workers and the public.

DOSH last conducted an analysis and issued a report on crane accidents in 2000 in which it studied the 158 crane accidents in California during the previous three years. The study concluded that machine instability and lack of communication were the major causes of the accidents, and that the major secondary cause was lack of training.

8. *Since then, what activities has DOSH pursued to improve communication at construction work sites, to ensure that cranes are erected and/or operated as intended, and that crane operators are fully trained?*

California continues to issue permits for tower crane erection and operation as well as to inspect each tower crane two times per year. In addition, there is a requirement that cranes be inspected and load-tested by a California-licensed crane certifier. The manufacturer's representative is also required to be present during the erection of the crane. As the result of the inspection and load-testing process there has been only one mechanical gear train failure we are aware of since 2000, where a load was dropped. This incident did not result in injury.

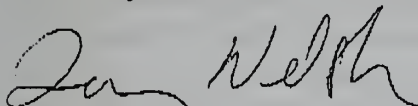
The Crane Safety study in year 2000 indicated that most of the accidents resulted from crane operator errors. Title 8, California Code of Regulations, section 5006.1 now requires operators of mobile and tower cranes to be certified. This standard, which took effect on June 1, 2005, requires crane operators to be trained, pass a written test, pass a practical proficiency examination, and to be certified by a third party to operate a mobile or tower crane.

In addition, communication between crane operators at sites with multiple cranes is addressed by another recently adopted standard, Title 8 California Code of Regulations, section 5001(f), which took effect on June 22, 2007. This standard requires effective communications between crane operators and signal persons, as well as the use of dedicated frequencies where two-way radios are used.

Lack of adequate training of workers who rig or attach crane loads has been an underlying cause of many crane and hoisting accidents. Cal/OSHA's Research and Standards Safety Unit is currently working with the Standards Board to propose a regulation that addresses the training and qualification of riggers.

Thank you for allowing me the opportunity to answer your questions. I look forward to meeting and speaking with you and the others members of the committee on June 25, 2008. Should you need anything further please call me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Len Welsh".

Len Welsh

Chief

Division of Occupational Safety and Health

ALW/zm

Department of Industrial Relations
Division of Occupational Safety and Health

Cal/OSHA Penalties and Collections

Year	Penalties Assessed Prior to Appeal	Penalty Reductions as of 5-5-08	Penalties Assessed Minus Penalty Reductions ^{1/} as of 5-5-08	Dollars Collected as of 5-5-08
2007	\$35,657,932	\$7,194,524	\$28,463,408	\$6,613,570
2006	\$37,217,862	\$14,531,211	\$22,686,651	\$10,940,436
2005	\$31,697,497	\$14,511,604	\$17,185,893	\$11,080,836
2004	\$32,897,969	\$15,704,332	\$17,193,637	\$12,344,111
2003	\$34,417,280	\$16,266,598	\$18,150,682	\$13,593,611

Footnote

1/ Included in these figures are an undetermined amount of assessments not collectable because the cases may still be pending before the OSH Appeals Board.

Roles and Responsibilities

The California State Teachers' Retirement System (CalSTRS) is the largest teachers' retirement system in the United States, with approximately 813,000 members and beneficiaries and assets of \$171 billion. It covers teachers in public K-12 schools and community colleges. The primary responsibilities of CalSTRS include maintaining a fiscally sound plan for funding approved benefits, providing authorized benefits to members and beneficiaries in a timely manner, and furnishing pertinent information to teachers, school districts, and other interested groups. The board has overall management responsibility for CalSTRS and the authority to review applications for CalSTRS benefits.

1. *What have been your most significant accomplishments during your first term on the State Teachers' Retirement Board? What do you hope to accomplish during your current tenure? How will you measure your success? Please be specific.*

California school districts are struggling with health care funding challenges and are subject to GASB disclosure requirements regarding district indebtedness for retiree health insurance. The CalSTRS Board asked staff to help school districts meet their disclosure requirements.

The teacher health care issue goes far beyond disclosure and, I contend, puts California educator retirement in jeopardy. I believe I've made a significant contribution by raising board and public awareness of the health insurance challenges retirees are facing.

When I met with retired teachers through out the state I encounter teachers in a panic over the costs of health care. While a few large districts such as LAUSD, Oakland, and San Francisco provide life-long health care for retired teachers, it appeared most districts from small or rural districts did not.

As the only teacher on the CalSTRS Board from a small rural district that provides no insurance, I advocated also using our task force for a new look at the retiree health insurance situation. Our board voted to form a task force to examine the challenges our retired teacher face as they try to access, and pay for, health insurance. They are considerable and getting worse.

As chair of a new committee (the Appeals Committee), chair of the Legislative Committee, and vice-chair of the board, many more accomplishments are works in progress but currently incomplete. First and foremost, I hope, with your help and support, that we will be able to collaboratively tackle a plan to resolve the CalSTRS unfunded actuarial obligation.

Senate Rules Committee

MAY 27 2008

Appointments

2. *What do you believe is the most important responsibility of a board member?*

The responsibility of each board member is to be a diligent fiduciary and always put the financial welfare of our members, and their retirement security first.

3. *Since you are appointed to a "public member" seat, what do you believe your responsibilities are to the public in general?*

While my seat on the CalSTRS Board represents retired CalSTRS members, this position is, as are all board positions, as fiduciary to all of the 800,000 members of the CalSTRS system, both active and retired. It is my responsibility to always keep the entire membership in mind whenever I vote or speak for the board.

4. *What training and assistance do you receive from staff or others to assist you in deliberating often complex CalSTRS' issues?*

At the suggestion of CEO Jack I attended the fiduciary college training at Stanford University shortly after I was first appointed to the board. It was at that training that I first fully understood the importance of the position I hold, including the personal and professional, liability I've accepted in behalf of California's educators.

CalSTRS staff presents a wide range of outstanding opportunities for growth so board members are well informed and continually expanding our knowledge base. I participate as often as I possible. At the suggestion of the board fiduciary counsel we also receive *The Economist*, *Pensions and Investments*, *The Deal*, numerous online articles, and access to various conferences that specialize in timely issues relevant to our decision-making.

The staff work that goes into our meeting agendas and board education meetings is extensive. Outside experts are frequently brought in as needed. The education opportunities presented to us by staff are of the highest quality, as is the work they do in our behalf. I feel however that I am still on the lower half of a learning curve that is close to vertical, and will remain there for years if I am fortunate to receive your confirmation.

CalSTRS and the State Budget

The state is facing a budget crisis, with a projected multibillion dollar deficit. The Governor has put forward a budget proposal that will distribute this deficit equally to all areas of the budget, including education. As you know, the Governor has also put forward a budget proposal for CalSTRS that affects the Supplemental Benefit Maintenance Account (SBMA). The proposal would simultaneously (a) reduce the state's contribution to SBMA, (b) vest this benefit at 80 percent of purchasing power for CalSTRS' members, and (c) allow the board to increase future state contributions if more funding were needed to meet the obligation to retirees. At the same time, the

board has put forward a proposal that is similar to the Governor's proposal, but vests the purchasing-power benefit at a higher level (82.5 percent) than the Governor's proposal.

5. *When making a decision as a board member, how do you balance your fiduciary responsibility to CalSTRS' beneficiaries with the budgetary needs of the state, especially given the important role that the state plays in funding both the state's public K-12 system and the CalSTRS pension system?*

As a fiduciary my first responsibility is the financial security of the retirement system for California educators. It is my charge to do everything possible to be sure that when educators reach retirement they have a protected defined benefit retirement income. It is the obligation of CalSTRS board members to responsibly administer the portfolio and its benefits on behalf of California's educators. The challenge is to provide a safe core benefit that will endure for our membership.

California owes much to its retired educators. Yet, California educators as a whole have education requirements, far above and retirement benefits far below, most other state employees - in particular those in public safety. It is my hope, as a member of the system, that our state will put retirement security for teachers, who have given so much for so long, a little higher on the ladder.

6. *In its analysis of the 2008-09 Budget Bill, the Legislative Analyst's Office raises various concerns about the Governor's proposal regarding SBMA, one of which is the risk that the state's contribution rate to SBMA would have to increase in future years. What is your opinion regarding the Vesting portion of the Governor's proposal and the benefits it gives to retirees versus the long-term liability it leaves for the state?*

The board collectively determined that vesting the SBMA simple benefit was important to protect retired members from inflation in light of educator benefits far below other public retirees in California. I believe that the State of California owes much of its success to its presently retired educators, some of whom live in abject poverty.

The majority of retired CalSTRS members (62%) have no district help with the expense of health insurance, health care costs, or long-term care. In addition, the 2% annual cola for CalSTRS is fee simple, lacking even the positive advantage of compounding to help with ever-escalating demands on limited funds. The final blow is a Social Security off-set for California teachers. If California examines its long-term liabilities, surely fractions of a percentage point from its already meager contribution to teachers should be at the bottom of its priorities for cuts.

Unfunded Liability

The most recent CalSTRS actuarial valuation found the system's unfunded liability to be approximately \$19.6 billion, leaving the system 87 percent funded. The size of the unfunded liability decreased relative to the previous year's valuation. While this unfunded liability is comparable to that of big pension systems in other states, it is still substantial.

7. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? How did you reach your conclusion?*

Based on the three years I have been on the CalSTRS board, the best alternative for closing the unfunded liability is to give the CalSTRS Board the authority to raise contributions on employers and members incrementally. This should be done with clear advanced warning, by a small amount each year, to close the gap. When the obligation is fully funded then negotiations should begin to decide if a reduction in contributions, or an enhancement of benefits, is best for the teachers.

My conclusion is based on the sum of all the board presentations and conferences I attended, articles read, and expert information provided over the tenure of my board membership. The longer this decision drags on, the larger the size of the increments that will become necessary to bring the fund back to health.

8. *When considering options to address the unfunded liability, how do you balance the following considerations: the current volatility in the financial markets, the state's fiscal situation, and your obligation to CalSTRS' members?*

I'm a fiduciary to the educators of this state. My obligation is first and foremost to our members. We expect volatility in the markets and allow for it in our planning. We invest for the long term, and build short term volatility into our projections. Our investment professionals are as good as it gets.

Retiree Health Benefits

Currently, individual school districts make decisions about whether to fund the health benefits of their retired teachers. According to the Legislative Analyst's Office, 60 percent of school districts report providing some amount of health benefits to retirees, with some of these districts reporting substantial unfunded liabilities. As you know, the CalSTRS' board recently considered a proposal to redirect a portion of future state contributions that otherwise would be credited to SBMA to fund a health care benefit to retired members.

9. *The Governor's Post-Employment Benefits Commission recommended that local governments in California (including school districts) pre-fund all retiree health benefits. What are your views of this recommendation given the difficult budget*

situation? How might school districts go about implementing such a recommendation?

Ideally, the recommendation makes sense. Pre-funding will be a challenge to most districts in the state, particularly those with declining enrollment, due to the fiscal challenges they already face. My concern is for teachers who are currently retired and have no way to pay for the ever-increasing demands of health care.

10. *The board recently proposed redirecting a portion of future state contributions to SBMA and instead using these for health care benefits for retired members. How does this proposal fit into the overall retiree health issue?*

In actuality, the board has not voted to redirect a portion the SBMA to a health care benefit. I believe the health insurance task force is reporting at our June meeting.

CalSTRS studies on the adequacy of its benefits have identified the importance that employer paid retiree health plays in allowing retirees to maintain their standard of living. If 62 percent of current retirees do not have any district provided health care in retirement, then our projections of an adequate retirement are based on a fallacious premise. Even more ominous for future staffing projections, those who have retiree health care are from large districts. Districts under 500 teachers generally lack any district-provided retiree health insurance. The implications for future California teacher recruitment are troubling.

Corporate Governance and Investment Performance

In recent years, large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest.

11. *What are your views on the board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?*

Good corporate governance results in a stronger, healthier company. As a rule stronger companies that are accountable to stockholders earn better returns. I see no disconnect that would cause me, as a fiduciary, any concern. CalSTRS exemplary leadership in this area, along with CalPERS, is recognized worldwide. This should be a source of pride for the Legislature and the Governor.

When the stock market experiences a major decline, the value of many investments is reduced. Although public pension fund portfolios are indexed and diversified, at times major declines in the stock market have resulted in significant losses for public pension funds.

12. *What long-range and preventive measures should public pension funds, such as CalSTRS, implement to reduce or mitigate the risk of catastrophic losses in the stock market?*

The only way to mitigate risk in our portfolio is to be well diversified and plan for the long term. We do both. Additionally our long term time horizon of our diversified portfolio allows for, no expects, down periods. Our investment staff can't hit 22 percent every year, but what a thrill when it does!

Actuarial Analyses

The board has the ability to ask for actuarial analyses of CalSTRS' assets and various proposals that would affect its liabilities. To perform its analyses, the actuary must make certain assumptions about future economic factors. For example, in evaluation the latest proposal to reduce the state's contribution for SBMA, the actuary assumed that inflation would average 3.25 percent annually over the next 30 years.

13. *What responsibility do you believe you have as a board member to assess whether the actuary's assumptions represent both the worst- and best-case scenarios? How do you intent to carry out this responsibility?*

We continue to ask for a best and worst-case scenario of both our staff and board actuarial counsel. We also solicit outside actuarial advice on a regular basis. With a portfolio as large as ours we continually hold ourselves to the "prudent man" test. On certain issues, such as this one, I need to rely on the experts. The 3.25 percent assumption once again however illustrates the inadequacy of the teachers 2.0 percent non-compounded, non-vested annual cola.

14. *The Governor's Post-Employment Benefits Commission recommended that the state create a California actuarial advisory panel to advise retirement systems. What is your opinion of this recommendation?*

We already have independent actuarial advice to the board, but I have no problem with this recommendation as long as the expense for this panel does not come from teacher funds. I would imagine that this new panel would be a benefit to smaller entities with fewer resources.

California Integrated Waste Management Board

Rosalie Mulé, Board Member

Responses to Questions

June 18, 2008

Goals

1. *Please provide us with a brief statement of your goals as a reappointed member of the Board. What do you hope to accomplish during your Board tenure?*

I am honored that Governor Schwarzenegger has reappointed me to the California Integrated Waste Management Board (CIWMB). It continues to be a privilege for me to serve as a member of the Board. While I am proud of our accomplishments during my first term, much remains to be done in order to continue our mission to maximize diversion of (waste) materials from landfills to higher and better uses. My goals for my current term include:

- Continue to focus on the core mission of the organization and diversion of the next 50% by exploring and developing policy on Extended Producer Responsibility (EPR).
- Expand markets in part by exploring the role waste materials can play as feed stocks for the production of energy and alternative fuels. Coordinate with other state agencies on initiatives such as the Bioenergy Working Group, the Renewable Portfolio Standard, the Low Carbon Fuel Standard, and AB 32.
- Continue to provide consistent enforcement of solid waste laws and regulations through regulatory and statutory changes and improved training for both CIWMB staff and our LEAs.
- Continue to provide leadership and expertise in the area of solid waste diversion and resource management, and to ensure that the CIWMB will meet new challenges as well as serve the best interest of the people of California.

Senate Rules Committee

JUN 18 2008

Appointments

2. How would you rate your success in achieving the goals that you listed for your initial term on the board?

When I came to the CIWMB, I identified several goals that I hoped to accomplish.

- Goal 1 Increase focus and accountability through clear priorities that can be tracked with quantifiable performance measures.
- Result Formulated and adopted clear measureable set of Strategic Directives for the CIWMB to fulfill its mission and for the organization to function effectively.
- Goal 2 Provide appropriate tools and training for CIWMB staff and our partners in local government. This will enhance performance by our Local Enforcement Agencies and local jurisdictions with the resources they need to improve diversion success.
- Result Developed and instituted a Strategic Directive (SD 12) which includes objectives for comprehensive training/development for CIWMB staff and Local Enforcement Agencies (LEA). Expanded LEA training program. Through reorganization, provided training and tools to the local assistance staff so they can better assist jurisdictions in meeting AB 939 requirements.
- Goal 3 Reform our diversion measurement system so that it accurately portrays both the efforts and accomplishments of jurisdictions, in both program implementation and diversion.
- Result Introduced SB 1016 (Wiggins) Disposal Measurement Act.
- Goal 4 Explore programs and technologies—in collaboration with our sister agencies within CalEPA as well as other state agencies—that will increase diversion while continuing to protect public health and safety and our environment.
- Result Successfully implemented the Electronic Waste Recycling Act (EWRA) in collaboration with the Department of Toxic Substances Control (DTSC) and the Board of Equalization (BOE). Partnered with CalEPA, boards, departments, and offices as well as other agencies (Energy Commission, Resources Agency) in policy implementation with AB 32, Bio-Energy Action Plan as well as other environmental policies.
- Goal 5 Continue to provide leadership and expertise in the area of solid waste diversion and resource management, and to ensure that the CIWMB will meet new challenges as well as serve the best interest of the people of California.
- Result Initiated several measures to increase compliance and improve enforcement. (See questions 4 and 9).

I am very pleased with the progress of the organization in the past four years. In 2005 the CIWMB reported a statewide diversion rate of 50% - up from 47% when I began my tenure at the CIWMB. Today we are at a statewide diversion rate of 54%. This is due in large part to the collaborative efforts of the CIWMB, local jurisdictions, and their haulers and recyclers. However, I believe some of the policies I initiated and the CIWMB adopted also helped to increase diversion. For example, we streamlined grant applications for various tire, household hazardous waste, and other programs and provided higher levels of funding. The jurisdictions in turn, were able to divert additional volumes of materials, because of the additional resources available to them.

As I have stated in the past, I challenge anyone to show me any other statewide program that has achieved and enjoyed the success of the Integrated Waste Management Act.

3. *How can the Board best succeed in fulfilling its basic responsibilities outlined under law? What specific steps will you take to ensure the board is fulfilling its core mission first and foremost?*

While the current organizational structure was established under AB 939, the CIWMB is responsible for implementation of several California laws including: The Oil Recycling Enhancement Act/Tire Recycling Act/and Electronic Waste Recycling Act, as well as AB 939, the Integrated Waste Management Act. As mentioned previously, the Board adopted Strategic Directives to ensure the CIWMB is fulfilling its core mission of maximizing the diversion of (waste) materials from landfills to beneficial uses. These directives include baseline measurements and performance criteria to ensure that we continue to meet and exceed the requirements set forth in statute.

In addition, the CIWMB underwent a reorganization in mid-2007. The purpose of the reorganization was to align staff and related resources along regulatory and sustainability functions. The reorganization also reflected a maturing of the organization and its programs. The reorganization also reflected a movement to a market-based delivery of programs by integrating a geographical component within the two program functions. The reorganization allows the Local Assistance staff to provide technical, program, and market development assistance on a regional basis. This will foster the development of programs and markets based on local circumstances as opposed to a statewide approach to diversion program implementation. An important component of this regional approach is hiring local assistance staff who live in or near the communities they serve, and have a keen understanding of those market areas.

4. Should enforcement of solid waste laws and standards be improved? What actions has the board taken to address the concerns raised in these reports?

The CIWMB has worked diligently to address the issues identified in the 2000 and 2003 Bureau of State Audits Reports and the CalEPA enforcement report. Some of the changes were achieved through CIWMB cooperation with the Legislature to change statute. These included AB 1497 (Moñtanez, 2003), which defined when public hearings are necessary for permit revisions and lifted the cap on administrative civil penalties. Another bill (AB 2159, Reyes, 2004) which removed the "stay" of a cease and desist order when a facility operating without a permit appeals the order and decreased the length of time to hear the dispute.

The CIWMB adopted Strategic Directives 4 – *Landfill Management – assure safe and adequate landfill disposal and long-term maintenance of landfills*; and 8 – *Enforcement/Permitting – manage and mitigate imports of solid waste on public health and safety and the environment by ensuring compliance with regulations and State Minimum Standards through integrated and consistent permitting inspection and enforcement efforts*. All the CIWMB's programs use a compliance first approach by providing assistance and training to help the regulated community comply with the law. When compliance is not achieved, emphasis switches to enforcement.

As stated, the CIWMB implemented a major reorganization which consolidated regulatory compliance elements required by laws governing solid waste and tire facility operations, waste tire haulers, local government and state agency diversion from waste disposal, and minimum recycled content requirements for plastic and paper products. The CIWMB is currently reviewing existing compliance and enforcement practices to improve their effectiveness.

Currently, CIWMB staff also participates in the coordinated CalEPA Cross Media Enforcement Initiative. The goal of this comprehensive enforcement effort is to coordinate the enforcement efforts of the Boards, Departments, and Offices (BDOs) within CalEPA. Consistent with the CalEPA Enforcement Initiative, the CIWMB has adopted Strategic Directives to achieve 100% compliance and established a separate enforcement division during the recent CIWMB reorganization.

Currently, the CIWMB is sponsoring two bills to improve enforcement. They are:

- AB 2679 (Nunez/Ruskin) - would enhance solid waste facilities enforcement. This bill would authorize the CIWMB to take any enforcement action available to LEAs, and
- AB 2695 (Niello) - would designate the CIWMB as the lead state agency for coordinating illegal dumping prevention and enforcement activities, and provide local governments with additional financial assistance and enhanced the enforcement of solid waste laws.

5. What actions is the Board taking to ensure all jurisdictions meet the statutory requirement? What schedule has been established for the jurisdictions still under 50 percent to be brought into compliance?

The CIWMB established a number of strategic directives that are focused on ensuring that all jurisdictions are meeting their statutory diversion requirement. The following is an overview of those sub-directives; and the actions that staff is taking to implement the sub directives, and the associated timelines.

- Sub directive 8.1 addresses the CIWMB's monitoring of jurisdictions' progress and status in implementing those diversion programs outlined in jurisdiction planning and reporting documents. With continual monitoring, the CIWMB will ensure that all jurisdictions within California are adequately implementing their diversion programs.
- Sub directive 8.2 focuses on the CIWMB's overall monitoring of jurisdictions to ensure that each jurisdiction is implementing diversion programs and meeting the 50% diversion requirement. This sub directive provides the foundation for achievement of strategic sub directives 3.1, 3.2 and 8.1, which is to achieve 100 % jurisdiction diversion program implementation and 100% jurisdiction achievement of the 50% diversion requirement.

Key activities and timelines include:

- CIWMB staff reviews each jurisdiction's annual report to the CIWMB. Based on this review, CIWMB staff identifies the number of jurisdictions that have met the diversion requirement, determines the level of diversion program implementation for each jurisdiction, and visits each jurisdiction to verify program implementation.
- Every two years, CIWMB staff identifies and reports to the CIWMB on those jurisdictions that (1) have implemented diversion programs and met the diversion goal, (2) those that have adequately implemented diversion programs but have not met the diversion goal, and (3) those that have not adequately implemented programs and have not met the goal.
- The latter are referred to the CIWMB's Waste Compliance and Mitigation Program staff for issuance of a compliance order. Once referred, the Jurisdiction Compliance and Audit section and Local Assistance and Market Development division (LAMMD) works with the jurisdiction to develop a diversion program implementation work plan. If the jurisdiction fails to implement this plan, the CIWMB assesses fines of up to \$10,000 per day.
- The Board has fined the following five jurisdictions to date for failing to meet the conditions of their compliance orders.
 - City of Gardena was fined \$70,000 on September 16, 2003. They paid the fine on October 27, 2003.
 - City of McFarland was fined \$11,330 on July 14, 2004. They paid the fine on July 29, 2004.

- City of Fortuna was fined \$5,000 plus \$100 per day. However, the CIWMB suspended the fine pending Fortuna's successful completion of implementing their solid waste diversion programs.
- City of Arvin was fined \$5,000 on November 8, 2005. They paid the fine on December 21, 2005.
- City of Cerritos was fined \$82,800 on January 23, 2008. They paid their fine on March 12, 2008.

LAMD staff, in coordination with the Jurisdiction Compliance and Audit (JCA) staff, are also currently conducting program gap assessments and developing targeted program implementation Local Assistance Plans for jurisdictions that were recently issued a compliance order. The Local Assistance Plan identifies the programs that need to be implemented to bring the jurisdiction into compliance. LAMD staff, in coordination with JCA staff, is working with seven jurisdictions that were placed on compliance orders to provide technical assistance as outlined in their Local Assistance Plan.

As stated previously, the reorganization has put more of the CIWMB's staff on the "front lines," delivering CIWMB programs where local market development efforts demand assistance. Program delivery is much more effective at the local level, where efforts can be integrated, comprehensive, and market based.

6. *In your opinion, what needs to be done, if anything, to continue progress toward reducing and recycling of solid waste beyond the statutory requirement to divert 50 percent of solid waste from landfills? Should the board make that determination or should the law be amended to address the issue?*

Jurisdictions around the State have made great progress in reaching the 50% level, and as I mentioned previously, statewide we are now in the mid-50s. But we – jurisdictions, businesses, the waste industry, and the state as a whole – are poised to make even greater progress. Some jurisdictions have already adopted, and are reaching higher goals. The CIWMB recognizes this opportunity and has adopted a number of strategic directives that, for example, strive to increase tire recycling (SD 3.4 – increase tire diversion to 90% by 2015) and organics diversion (SD 6.1 – reduce the amount organics in the waste stream by 50% by 2020). Another priority for me and the CIWMB is Extended Producer Responsibility, which, in part places more responsibility on manufacturers for the end-of-life management of their products.

The CIWMB lacks authority in most areas to truly require diversion beyond the 50% level. I believe it would help if the Legislature provided overall direction to the CIWMB, jurisdictions, and businesses on what the target for the next 10 to 15 years should be. In addition, making greater progress will take a concerted effort on many fronts, so besides setting a new target, the Legislature also could provide the CIWMB with additional tools.

To understand what types of tools might be useful, it helps first to take a look at the disposal wastestream. Two thirds is comprised of products other than organics and one third is comprised of compostable organics. These offer different opportunities.

For products and non-organic recyclable materials, the opportunities and needed tools include:

- **Commercial recycling** – This is the largest untapped area, with businesses generating 60% of the wastestream. The CIWMB has no authority to require commercial recycling programs, but it has developed a voluntary commercial recycling measure under the AB 32 Scoping Plan that, if successful, would result in several million tons of diversion and over 6 MMT CO₂E of greenhouse gas emissions reductions. In June, the Board approved a Commercial Recycling Cost Study which will further quantify greenhouse gas reductions.
- **Local and state agency purchasing** – While statute does direct state agencies to purchase certain recycled content products and materials, the CIWMB and Department of General Services (DGS) lack enforcement tools to ensure this occurs. The State also does not have a systematic means of tracking information on green product purchasing by state agencies and vendors. In terms of local purchasing, the CIWMB requires its grantees to have a recycled-content purchasing policy.
- **Extended Producer Responsibility** - would shift the burden of managing products at the end of their useful lives from local jurisdictions to, instead, brand owners and manufacturers. This is a growing policy elsewhere in the world, and in 2007 the Board adopted an extensive EPR framework as a policy objective. However, the CIWMB would need statutory authority in order to implement the framework.

In my opinion, EPR represents the most promising means to reduce disposal of materials to landfills.

For organics, the opportunities and tools include:

- Assistance to jurisdictions and businesses in expanding existing and siting new composting and other organics management facilities. This is proving to be one of the most vexing issues facing us for many reasons, including NIMBYism, regulatory initiatives by air quality districts and regional water boards, and economics. Tools that may help are county or regional processing capacity requirements/ programmatic Environmental Impact Reports/ greater recognition by other agencies of the benefits of composting, and longer-term planning by local elected officials.
- The CIWMB would like grant authority and additional funding for the Integrated Waste Management Account (IWMA) so that it can provide grants for pilot projects, research, facility improvements, and innovative local programs.

- Encourage organics take-back purchasing programs by local jurisdictions and state entities. The Institute for Local Government's California Climate Action Network Best Practices Framework includes such provisions.

Overall, reducing waste generation, increasing organics diversion, and increasing recycling offers us the opportunity to accomplish multiple environmental goals:

- Avoiding dependence on landfills.
- Reducing greenhouse gas emissions – for example, just recycling ½ of major materials from businesses over 100 employees would result in over 6 MMT CO₂E !!
- Increasing domestic energy and fuel production – for example, running food waste and other organic materials through anaerobic digesters will result in increased energy production, and other technologies such as hydrolysis can yield transportation fuels and other products.

7. *Please explain how modification of the solid waste disposal accounting system will help promote reduction, recycling, and composting.*

SB 1016 (Wiggins) the Disposal Measurement Act will create a more timely and accurate system of measuring compliance. It will emphasize implementation of diversion programs based on local waste streams and regional market conditions, and retain enforcement provisions currently in AB 939.

By using disposal data (readily available) as opposed to diversion rate data (18-24 months old) jurisdictions can identify and adjust their programs to address changes in their waste streams to increase diversion. It will allow for these changes to be made in a more timely manner, within a year. The current system, which uses data that is 2-3 years old, does not take into account current market conditions or waste characterization. For example, a jurisdiction that is experiencing growth, may implement a construction and demolition recycling program, whereas another jurisdiction that has no growth (built out) may wish to focus their diversion programs on other materials such as green and food waste. Again, the overall goal is to maximize diversion of materials from landfills, based on the jurisdiction's waste stream and market conditions.

8. Please describe the Board's actions on solid waste enforcement. How many actions has it brought over illegal dumping, solid waste facilities violations, and other violations of the Integrated Waste Management Act?

The CIWMB uses a compliance first approach with its enforcement programs, by providing technical assistance and training to the LEAs as well as conducting activities to the regulated community to educate them on solid waste laws and regulations. If compliance is not achieved, then the LEA or/and CIWMB staff will take enforcement action.

Solid Waste Facilities Enforcement

Facility compliance rates have improved while numbers of inspections have increased. Ninety-seven percent of the 533 solid waste facilities, solid waste operations, and disposal sites were in compliance in 2007. One measure of the level of compliance with the state minimum standards for waste management facilities is the number of facilities on the Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory). This list is composed of facilities that have a repeated number of violations and require close oversight by LEAs to bring them into compliance.

Between 2000 and 2007 the number of enforcement orders issued has decreased over half, while LEA inspections have increased 2%, EA inspections have increased 37% and CIWMB pre-permit and 18-month oversight inspections have increased 8%. This is due to the emphasis on compliance and providing increased training and oversight to the LEA's.

	<u>2000</u>	<u>2007</u>
Inspections conducted by LEAs	10,765	11,564
Inspections by the CIWMB's EA program	308	465
CIWMB inspections (pre-permit and 18 month)	130	188
Enforcement orders issued	81	55
Notice and Orders issued by LEAs	54	33
<i>Notices of Intent to List on the Inventory</i>	21	14
<i>Facilities not in compliance and listed on the Inventory</i>	6	7

Tire Enforcement

The CIWMB developed a "California Uniform Waste and Used Tire Manifest". CIWMB uses the information generated by the waste tire manifest system to ensure that all waste tires generated and transported within California have been accounted for and delivered to permitted end use facilities. CIWMB identifies discrepancies and gaps in the manifest system data and actively enforces the requirements.

In 2007, the regulated community included approximately:

- 20,000 tire related businesses
- 1100 waste tire haulers
- 45 minor waste tire facilities, and
- 7 major waste tire facilities.

Thirty-nine local tire enforcement grantees covered 79% of the state's tire sites and related businesses in 2007. This represents a significant increase in funding (\$4.7 million in 03/04 to \$6.6 million in 08/09 and coverage 64% in 03/04 to 79% in 08/09) since my tenure on the Board. The CIWMB and local tire enforcement grantees are working cooperatively with local district attorneys to hold those individuals who break California's waste tire laws accountable for their action either through fines or with criminal penalties.

The number of inspections at tire facilities has increased dramatically over the last 5 years. As the number of tire grantees has increased, additional tire facilities are inspected more frequently.

Tire Facility Inspections (52 facilities permitted for \geq 500 tires on site)

	Grantees	CIWMB
2004	4,019	313
2007	9,930	873

In 2007 the CIWMB sent 13 Notices of Violation to permitted tire facilities, and when violations were not corrected, commenced enforcement actions against 7 permitted tire facilities.

Illegal Dumping

Illegal dumping is a growing issue in the state and one which I have made a priority to address, both as a Board member and prior to my tenure at the CIWMB. Through the CIWMB's SD 8.9, CIWMB staff convened an Illegal Dumping Enforcement Task Force (IDETF) in 2006 which included local, state and federal government representatives as well as private haulers and environmental organizations. The purpose of the task force was to identify the scope of the problem and develop recommendations to address the issue.

Some of the findings of the IDETF include:

- A need for state leadership, coordination and assistance to local governments for illegal dumping, enforcement abatement and prevention programs.
- Legislation to provide state and local government with the authority to administer effective illegal dumping programs.
- Funding (local and state) to support the increasing costs of illegal dumping

AB 2695 (Niello) - Illegal Dumping, is a CIWMB sponsored bill which attempts to address some of these findings.

9. Please describe the board's actions to ensure local enforcement agencies (LEA's) act consistently and aggressively to enforce solid waste laws. Do LEA's enforce the law equally against public agencies and private entities? Should enforcement of solid waste laws be strengthened?

The CIWMB has taken several steps to increase its oversight and ensure proper enforcement by LEAs. In 2003, revised enforcement regulations became effective requiring LEAs to provide the status of enforcement orders to the CIWMB within 30 days of the compliance date. This has allowed the CIWMB to more closely monitor LEA performance in this area. In 2002, new regulations became effective which described when, how, and what actions the CIWMB can take in its LEA oversight role. As a result of these regulations the CIWMB has been able to address situations of potential conflict of interest between LEAs and local governments who operate solid waste facilities or who otherwise receive income from the operation of such facilities. Lastly, the CIWMB has revised internal procedures to better document deficiencies in LEA performance so that evaluations can be conducted more effectively and cover all substantive issues.

As a result of the reorganization and the increased emphasis on compliance and enforcement, the CIWMB adopted a compliance targeting strategy to address LEA performance issues by early problem identification and targeted technical assistance and training. The new system will identify problems more quickly than past practices so that assistance can be provided before a significant problem occurs. Where assistance does not result in compliance, the strategy lays out a process for early LEA evaluation with outcomes ranging from placing the LEA on probation to CIWMB taking over all LEA duties.

As noted in question 4 the CIWMB is the sponsor of AB 2679 (Ruskin) Enhanced Enforcement, which would strengthen the CIWMB's enforcement capabilities.

However, more can be done. I support additional changes that would improve the enforcement of solid waste laws and standards. For example, staff has developed a more structured and systematic training program for LEAs and includes solid waste facility operators in such training, pursuant to feedback from industry stakeholders and LEAs. In fact, the CIWMB has completed a four-year pilot training program for Managers of Landfill Operations (MOLO). Enhanced training of this sort would augment

enforcement efforts by acting preventatively and increasing accountability. Models for comprehensive training exist in other parts of the country such as the University of Florida Center for Training, Research and Education for Environmental Occupations (TREEO) program for training and certification of waste professionals.

10. What role do you play in monitoring the Electronic Waste Recycling and Recovery Account (EWRRA)? What is the justification for not acting until now?

The CIWMB's Budget Office provides ongoing oversight of the EWRRA in conjunction with the Covered Electronic Waste (CEW) program, using data received from the Board of Equalization (BOE) regarding fees collected and remitted by retailers, as well as data on the amount of money claimed by approved recyclers. From the outset of fee collection and CEW recovery activities, the EWRRA has experienced a healthy surplus of revenue due to fee collection outpacing CEW recycling cost demand. Historical and projected program revenues and payments:

	<u>Revenue</u>	<u>Payments Claimed</u>	<u>Pounds</u>
FY 2005/05	~\$31,000,000	\$11.4 million	(~24 million)
FY 2005/06	~\$78,000,000	\$45.9 million	(~95 million)
FY 2006/07	~\$78,000,000	\$~\$75 million	(~155 million)
FY 2007/08	~\$83,000,000 (projected)	\$~\$105M	(~210 million)

While the growth in the CEW recovery rates began to shrink the reserves near the end of FY 2006/07, the EWRRA contained a reserve of over \$50 million at the beginning of FY 2007/08. While solvency challenges were seen as an eventual possibility, the CIWMB would have been hard-pressed to upwardly adjust the covered electronic waste recycling fee in July 2007 with such a substantial surplus in the EWRRA, especially with limited track record on the likelihood or pace of continued program growth.

Furthermore, the Act establishes a clear calendar for making any adjustments to either the payment rates received by recyclers and collectors, or the fee levels paid by consumers. The **payment rates** can only be adjusted once every-other year (PRC 42477 and 424278) and are based on the average net cost of managing CEW. Payment rate adjustments are to be made on July 1st of applicable years, with 2008 being a year within which a payment rate change could be made. The **covered electronic waste recycling fee** can be adjusted annually for the purpose of keeping the EWRRA solvent (PRC 42464(f)). The fee changes must be made on or before August 1st of any given year, with the changes not taking affect until January 1st of the following year.

As can be seen by this statutory calendar, the CIWMB is compelled to take actions in a specified sequence that informs the next step. The fee increases that the CIWMB acted upon in June 2008 could be calculated only once the payment rates had been adjusted,

which was undertaken in May and will become effective July 1st. Payment rate adjustments are dependent upon cost data that is reported by system participants by March 1st of each year. This creates challenges with regard to deciding when and if to act to correct financial imbalances. However with additional experience in operating the CEW system, the CIWMB will be able to better anticipate needed programmatic adjustments.

11. *What enforcement measures has the board undertaken regarding e-waste recycling payments to protect the fund?*

The CIWMB takes all of its fiscal responsibilities very seriously, whether these are related to the CEW program or any of the myriad grant, contract, and loan offerings the CIWMB administers. In FY 2007/08, the CEW program accounted for almost half of all expenditures made from funds managed by the CIWMB, and ensuring EWRRA fund integrity is paramount.

While the Department of Toxic Substances Control's (DTSC) primary role is to oversee the operation of facility and handling of materials, the CIWMB collaborates with the DTSC on implementing and administering several aspects of the Act. However the CIWMB is tasked by the Act with primary responsibility for the financial aspects of the CEW payment system and undertakes review of recycling payment claims itself. Through this activity, program staff are able to detect and identify noncompliant, inconsistent, and/or deficient documentation and take enforcement actions via adjustment or denial of payment. Approximately 2.2% of claimed monies were adjusted from payments during 2007, amounting to almost \$2 million.

The CIWMB also coordinates with DTSC in those instances where noncompliance may be due to purposeful actions rather than incompetence. In June 2007 the CIWMB and DTSC entered into a MOU to more clearly define their respective roles and responsibilities when it comes to pursuing fraudulent activities within the CEW payment system. Due to its broader enforcement authorities under hazardous waste rules, DTSC takes the lead when staff evaluations determine that inconsistencies in required recordkeeping are likely due to falsification and fraud. DTSC is able to use criminal investigative authority to prosecute such circumstances, with CIWMB staff providing analytical support.

The CIWMB has also recently enhanced its internal audit program, bolstering its general ability to assess the risks associated with all expenditures through grants, contracts, and loans. At its June Board meetings, the CIWMB acted to amend its Strategic Directive 10 pertaining to fiscal responsibility, adding the CEW program to the scope of the audit program. The approved audit plan establishes goals for CEW program audits beginning with 9% in FY 2008/09 and ramping up to 18% in FY 2011/12.

The CIWMB also recently retained auditors from the Department of Finance's Office of State Audits and Evaluations to assist in validating "net cost reports" that are required from CEW payment system participants. While determining that most reports were well

substantiated by available documentation, the findings of the validation exercise will assist the CIWMB direct its compliance assistance efforts to improve record management among system participants.

12. What steps, if any, should the board consider to avoid the need for emergency loans in the future?

There are considerable uncertainties faced by the CEW recycling system as it looks to the future. These include the quantities of CEW that will be discarded in any given year, the impacts of the digital television transition (discussed more thoroughly below), and the revenue from sales of Covered Electronic Devices.

Unlike short-lived packaging material, such as beverage containers, the lifecycle of a durable good is largely unpredictable. This creates a fundamental challenge for the CIWMB when setting fees within the limits of allowable reserves. The Act states that the CIWMB must set fees to ensure “...**sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account...**”(PRC 42464(f)(2)). When the program is growing at more than 50 % a year, as it has been, such a reserve could easily be wiped out by a minor fluctuation in factors contributing to either CEW generation or revenue shortfalls.

In adjusting the fee this year, the CIWMB has opted for the fiscally prudent approach of assuming continued high recovery rates. Knowing that it has the authority to adjust the fee annually, this approach provides the CIWMB some degree of financial security, and fee payers some degree of comfort knowing that overcharges can be corrected in a timely manner.

In a related matter, the Act currently limits the CIWMB's authority to adjust the recovery and recycling payment rates to every two years. It is quite possible that the ability to adjust the payment rate more frequently could have forestalled the solvency challenge by allowing a recalculation of what was paid to recyclers and collectors in 2007, when substantial evidence was mounting that the original payment rates were too high. As both the CIWMB and CEW system participants look ahead to economic volatility in transportation, labor, and commodity markets, establishing the ability to correct rates more frequently could protect both the EWRRA funds and the collectors and recyclers who are dependent on payments that reflect the intent of the Act.

13. *With the changeover to digital broadcasting, it has been estimated that some 1.5 to 2 million televisions will be discarded through 2010 in California. How has the board prepared for this?*

The CIWMB is well aware of the impending digital television (DTV) broadcast transition and has been working with several partners to raise awareness and mitigate the potential for significant CEW generation. In keeping with the hierarchy of reduce and reuse before recycling, the CIWMB has encouraged Californians to take simple steps to maximize the utility of existing televisions. Through its eRecycle.org public outreach campaign, the CIWMB has carried a message of preparedness to California consumers, educating them on options and informing them of alternatives to unnecessary discard. From its eRecycle.org website, the CIWMB provides links to the Federal government's digital signal converter box coupon program. The CIWMB has also teamed with the California Broadcasters Association to raise awareness of converter boxes.

For those televisions that will be discarded due to the DTV transition, the CIWMB has factored in as part of its fee adjustment calculations the probability that a significant amount of CEW will result from consumer discard of obsolete and/or upgraded televisions. Since inception, the CEW recovery program had been growing at the rate of approximately four million pounds per quarter (about 60 million additional pounds per year). The program experienced a slowing of growth between 3rd and 4th quarter 2007, with modest gains in 1st quarter 2008. The CIWMB anticipates that CEW recovery volumes will continue to fluctuate and grow for the near term, with additional volumes resulting from the DTV transition being a significant component of this continued growth. The fee adjustments made by the CIWMB in June are intended to provide the necessary funding to manage this increasing flow through 2010.

June 6, 2008

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Attn: Nettie Sabelhaus
Rules Committee appointments Director

Dear Chairman Perata:

Thank you for allowing me to share my ideas and experience gained while serving on the Boating & Waterways Commission, to utilize in your deliberations in considering confirmation of my reappointment. I have been proud to serve on the Boating & Waterways Commission and to speak on behalf of the Commission, the Department and the Administration. It has truly been an honor to serve the people of California in this capacity.

I previously provided an updated Form 700, along with a notarized Oath; nonetheless another is herewith submitted.

Statement of Goals

1. Since my initial appointment in 2004, my most significant accomplishments as a member of the Commission have been as follows:

As Chair of the Commission for 2007, I held a Strategic Planning session to focus on Commission priorities and have department staff provide program presentations.

As Chair of the Commission last year I arranged a meeting with Commissioners from Parks and Recreation to open a dialogue between the two commissions to discuss common issues and concerns of boaters in the Parks system. This led to a subsequent meeting with Park representatives and the boating community building on efforts to work collaboratively.

As a Commissioner I made a motion to have a scientific study conducted to determine the environmental impact of copper based anti-fouling bottom paint. It was unanimously approved and is in progress.

Another was to have the department focus on changing internal processes; so that any environment impact requiring mitigation was accomplished at the onset of the project.

Senate Rules Committee

JUN 09 2008

I am the first *member of a recognized statewide organization representing recreational boaters* to have been appointed to the Commission, from the Board of Directors of Recreational Boaters of California. As such, the voices of the boaters are being heard, because I have encouraged the attendance of very divergent boating groups at Commission meetings. My fellow commissioners and the Department staff have relied upon me to provide the current pulse of the boaters to our deliberations. They have looked to me for candid information relative to boaters concerns on the waterways and legislative issues facing them.

2. My future goals during this next term on the Commission are to: (1) keep focus on the environmental impacts of boating with respect to aquatic invasive non-native species affecting boating, infrastructure and water quality; (2) advance legislation for boater safety through education and awareness; and (3) ensure available funding targets the needs revealed in the Boating Needs Assessment report 2000-2020.

I also hope to provide continuity for some of the processes I have put in place, while acting as a resource for others coming on to the Commission and the Department. We are at an economic crossroads in the State and certainly in the boating community. We must therefore adjust our thinking to a different mind-set; in order to be good stewards of the environment while providing safe boating access to the boaters of the state.

My success will be measured through the achievement of our primary mission: to provide for public access to California's waterways by advocating safe, enjoyable and environmentally responsible boating, in these times of economic uncertainty.

Advice to the Department

3. During my tenure, the statutory role of the Commission has been a topic of great concern and debate. As such, while Chair of the Commission in 2007, I placed a Strategic Planning session on the agenda. This session provided an opportunity to explore and gain clarity of our mission as a Commission. From this session, we also gained a better insight of the programs being carried out by the department and we are in turn able to prioritize our requests for program presentations by the staff. After such presentations the Commissioners have taken the opportunity to make comments and give to advice on the programs to the Department.

We have not in fact developed a list of priorities and presented it to the department. However, it is a good idea which I will recommend we begin right away.

In addition, because our Commission meetings are the only public forum provided for the boating community, we hear from various stakeholders. For example, there has been much discussion concerning the proposal to ban copper based anti-fouling bottom paint. I made the motion and the Commission voted unanimously

to require the department to conduct a scientific study of the environmental impact of this practice.

Another example of the Commission providing advice to the Department was while I traveled around the state and speak before boating groups and yacht clubs, I was continually bombarded with comments about how negative and demeaning some of the Departments PSA billboards and radio clips were to boaters. I advised the Department of these comments. At the Strategic Planning session I asked for a staff presentation of the public relations program. They brought in the consultant who reviewed how they surveyed and determined through focus groups the messaging. As a Commissioner, I reiterated my experiences with boaters and the feedback I received. I provided advice that their efforts would be more effective in educating boaters on the important messages against drinking while boating and environmental issues, by having a more positive slant. The other Commissioners all agreed and we asked to be included as a segment of the focus groups in the future.

For grants and loans the Commission reviews and considers the following:

- Demand for the facility
- Project costs
- Operation and maintenance practices
- Cost to the boaters to launch
- Ability to repay the loan
- Financial feasibility of the project
- Sufficiency of collateral
- Loan repayment and contractual terms and conditions
- Vessel berthing rates **are sufficient to repay** the loan

As a Commissioner, I encourage a detailed review of the proposal documents before a conclusion is reached on the funding approval. During my previous term I was one of the most active Commissioners making site inspections. I visited numerous proposed project sites. I met to discuss the project with the applicants and also queried the local boaters on their perspectives. Thusly, I made recommendations to the full Commission on the project, including comments from the boaters involved. As such, I consider all of the above to be critical elements in carrying out our fiduciary responsibility to ensure the protection of the state's monies.

There have been instances where applicants were ill-prepared to respond to queries posed by the Commission. After additional information or clarity was provided at a future meeting, these projects were reconsidered.

Another case in point regarding consideration of loan applications was Dana Point Harbor. Their project presentation had been scheduled and the applicant asked to

have it rescheduled for the following meeting which was to take place in San Francisco. I had become aware of some controversy with the local boaters. So when they requested to have the project heard in another locale, I felt this would be disadvantageous to the local boaters to have their concerns about the project heard by the Commission. Input from the local community is essential in our deliberations, which is why meetings take place in locations around the state. As Chair of the Commission, I discouraged the rescheduling of the presentation; so that all concerned had an opportunity to speak to their issues.

I know of only one case in which the Commission did not approve a loan, the Spud Point Marina project. However, the project was approved through the enactment of legislation. And, subsequently the project fell into default. I served on the Spud Point/Sonoma County sub-committee of the Commission. We worked to successfully bring about an agreed upon resolution of the default prior to litigation.

Equal Access

5. As a Commissioner I have learned of this controversy and the one fact that is clear to me is that the shortage of wet slips throughout the state has exacerbated this issue; so that people have to wait on a list for a whole generation or are left to resort to such extraordinary means to acquire a slip, which may not be fair in all instances.
6. Section 40 of the Harbors & Navigation Code requires that harbor facilities developed with department loan funds be open to all on equal and reasonable terms. Experience has shown, allocating slips may be best managed by the local governing body. As a Commissioner, it is our responsibility to ensure this is accomplished in concert with the requirements of Section 40.

The Statewide Boating Needs Assessment 2000-2020, concluded there is a need for \$837 million for new and upgraded public access boating facilities in California. The shrinking resources of the department leaves a considerable void in boating infrastructure to meet the present and increased demands for recreational boating from California's growing population.

Abandoned Vessels

7. It is my understanding the local agency with jurisdiction is responsible for determining the owner of an abandoned vessel through a due process system. Although the mere fact they are *abandoned* renders an owner practically non traceable.

8. Existing state laws are not adequate; for instance, they do not cover cleanup. If owners can be identified they could then be required to pay for recovery and disposal.
9. Yes. Removal and abatement is needed. The present process is wholly inadequate. Municipalities do not have funds for the removal of abandoned vessels. The present process requires the locality to shoulder 100% of the removal cost and then apply for 90% reimbursement from the fund. This is a significant deterrent to an already fiscally strapped county. As such, a great deal of the money available is never spent and countless abandoned vessels remain toxic hazards to navigation. The present process could be improved. One possible solution would be for the State to provide 100% of the abatement cost and simplify the process. In addition, AB 1950 (Lieu) would through voluntary surrender of old vessels provide for vessel abatement more effectively reducing both recovery and cleanup by pre-empting abandonment and reducing environmental and navigable hazards to our waterways.

Public Trust Responsibilities

10. As a Commissioner I know that it is critical to work to protect all of our public trust resources. I carefully consider the environmental impact of every grant and loan project recommended for Commission approval. I am more sensitive to this obligation because of my participation in the Delta Vision Stakeholder Coordination Group process. And as an example, an incident with an approved project in the City of Antioch brought that responsibility to the fore. A boat launch ramp had been approved by the Commission a number of years back and was finally beginning when citizens brought to their Legislator's attention the project was situated adjacent to some wetlands. Senator Tom Torlakson requested a meeting with the Department and asked me to attend, in that I reside in his District and familiar with the local area. The meeting culminated with the Department's recognition of a need to change their process to incorporate an up front review of the EIR and ensure any mitigation required is undertaken. This reinforced my awareness of our Public Trust obligation. As such, I always question the department's process on a project recommendation with respect to protection of our natural resources.

Any and all mitigations required and/or suggested in the Environmental Impact report are reviewed and questioned to assure compatibility with the Act in relation to the location.

As Past President and a current Director on the Board of Recreational Boaters of California (RBOC) and a member of the Board of Directors of Pacific Inter Club Yacht

Association (PICYA), all recreational boaters are urged to be good stewards of the waterways and the environment in order to preserve and enhance the sport we love for future generations. As a Commissioner, I intend be actively engaged and in the forefront of fighting the infestation of aquatic invasive non-native species (such as quagga and zebra mussels) in the state which can have a deleterious effect on the water quality, infrastructure and boating as we know and enjoy it today. I will continue to champion the efforts for mandatory boater education and certification to aid boating safety.

Thank you for allowing me to share my views. It is my understanding that the Governor wants appointees to boards and Commissions to be active and to exercise independent judgment in performing their duties. In my service on the Commission, I intend to meet these expectations.

Sincerely,

Lenora S. Clark

Lenora S. Clark

July 3 2008

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA, 95814-4900

Senate Rules Committee

JUN 04 2008

Appointments

Attn: Nettie Sabelhaus
Rules Committee Appointments Director

Dear Mr. Chairman:

Your letter of May 14, 2008 asks several questions in consideration of my confirmation as a member of the Boating and Waterways Commission.

Statement of Goals

1. *Since 2007 when you were first appointed what have been your most significant accomplishments as a member of the Boating and Waterways Commission*

Response:

The following are my most significant accomplishments:

- (1) I have been the most active member of the commission in making the required field inspections of project sites and applicants prior to loan or grant consideration by the commission.
- (2) I have been active in forging a consensus in support of strategic planning and establishing resource and project funding priorities
- (3) I have consistently encouraged grant and loan applicants to use best available technology in construction debris removal and recycling and have gotten satisfactory responses.
- (4) At the end of my first year of service, the commission elected me its vice chairman and empowered me and the chairman to meet with the

department director and staff between commission meetings to strengthen agenda management.

2. *Please provide a brief statement of your goals for the future. What do you hope to accomplish during your next term on the Boating and Waterways Commission? How will you measure your success?*

Response:

As reported last year to the Rules Committee, I have three primary goals for my service on the Boating and Waterways Commission: (1) improving public access to our waterways; (2) ensuring available funding for both new and aging infrastructure projects; and (3) promoting boating safety.

My success will be measured by the following actions:

- (1) Establishment of a commission rule that all grant and loan applications requiring commission approval be conditioned on a demonstration by applicants that they have policies and procedures governing slip assignments and waiting lists that comply with the Harbors and Navigation Code requiring facilities in harbor and connecting waterways to be open to all on equal and reasonable terms.

Completion by the Department of Boating and Waterways of an update of the *Statewide Boating Needs Assessment 2000-2020*; prioritization of these needs and resulting resource requirements; and advocacy for needed funding.

The need for current information to assess resource needs is critical. Most of California's marinas, boat launching and related facilities are forty plus years old and need renovation and replacement. As state population increases, demands for recreational boating opportunities increase proportionally. This demand exceeds the land and shore available for boat launching, mooring, docking, dry storage and marine services.

- (3) Commission support for legislation requiring boat operator safety education and certification consistent with the approach contained in AB 1458 (Duvall).

A majority of boating accidents involve younger boaters operating personal water craft with any education and training in water safety.

Advice to the Department

3. *How does the commission carry out its role of advising the department? Has the commission developed a list of priorities and presented it to the department? Please describe.*

Response:

It is my understanding that the Governor wants and expects appointees to boards and commissions to be active and independent in performing their duties. I try to meet these expectations.

The Commission is charged with advising the Boating and Waterways Department on all matters within the jurisdiction of the Department. The Commission must also review and approve loans and grants exceeding \$500,000 proposed by the Department for boating facilities. The Commission has a practice of requiring a site visit by at least one commissioner prior to bringing the proposed loan or grant to the commission for action.

Each proposed small craft harbor loan and boat launching facility grant is presented to the Commission for its advice and consent at a public meeting held in different areas of California. The applicant, either a public agency or a business, is required to attend the meeting when the proposed project is presented to the Commission. I have been active in questioning applicants on all aspects of the proposed projects.

Before it consents to small craft harbor loans to local agencies and private businesses, the commission reviews and provides advice on the following elements to ensure that the project is developed in a fiscally prudent manner:

- Ability of the borrower to repay the loan, project financial feasibility, market demand, sufficiency of collateral, vessel berthing rates and how they are computed, proposed berthing rate versus market rates, operation and maintenance practices, loan repayment and contractual terms and conditions.

Before it consents to boat launching and facility grants to public agencies, the commission reviews and provides advice on the following elements:

- Extent of demand for the facility, project costs, size and components of the facility, operation and maintenance practices, and cost to the boater to launch at the site.

In regard to advising the Department on all matters within its jurisdiction, the Commission has established, from time to time, committees on various program areas. For example, the Commission has established a two-member committee related to a loan dispute issue concerning Sonoma County and the Spud Point Marina. The dispute has been successfully resolved.

In addition, the Department provides briefings to the Commission about its programs and issues. The Commission, in turn, provides advice to the department on such matters by expressing informal or written support or opposition, as appropriate.

The commission has not provided a list of priorities to the department; however, I believe that it should. I have worked and will continue to work to forge a consensus on the need for future agenda items involving strategic planning and funding priorities. The department has given assurances that we will have agenda items on these subjects.

4. *Under what circumstances would the commission not approve a loan or grant proposed by the department?*

Response:

The factors considered by the commission in deciding whether to approve loans or grants proposed by the department include the ability of the borrower to repay the loan, project financial feasibility, market demand, sufficiency of collateral, vessel berthing rates and how they are computed, proposed berthing rate versus market rates, operation and maintenance practices, loan repayment and contractual terms and conditions.

Similarly, in my opinion, the Commission would not approve a grant proposal if it were not satisfied that the project met reasonable criteria related to the demand for and public access to the facility, project costs, size and components of the facility, operation and maintenance practices, and cost to the boater to launch at the site.

Equal Access

There have been complaints that there is not equal access at some marinas that have received state grants. Last year the Orange County Grand Jury criticized Newport Harbor's system for managing its system of slip rentals. Similarly, in 2001 the Santa Barbara County Grand Jury said that local harbor authorities created "a private club on some of its most valuable property" by allowing a system similar to Newport Harbor.

In January, your commission released a report that listed a number of ways in which waiting lists for slip rental are circumvented, including the purchase of a vessel already in the slip, and the purchase of a share in a vessel already in a slip and then transferring the old vessel out. In both cases a vessel owner can access a slip rental without being on a waiting list. These types of transfers also add value to vessels that would be worth less if the slip was not included.

5. *Do you believe that these types of agreements that circumvent waiting lists are appropriate?*

Response:

I do not believe that these types of agreements are appropriate.

6. *Should state loans and grants take into consideration whether or not a facility provides equal access?*

Response:

Yes. As previously indicated in response to question 2, I favor conditioning loans and grants to require that applicants have policies and procedures for slip rentals and waiting lists that comply with the open and equal access requirements of the Harbors and Navigation Code. I believe that the responsibility for developing and enforcing such policies and procedures, subject to any conditions that the commission might impose, should remain with the local governing body for the marinas receiving public funds.

Abandoned Vessels

7. *Who has the responsibility for tracking down the owners of abandoned vessels?*

Response:

The local agency with jurisdiction is responsible for abandoned vessels and tracking down their owners.

8. *Are existing laws adequate to require vessel owners to pay for cleanup?*

Response:

No. Current state law does not deal with abating vessels prior to abandonment and are inadequate to require owners to pay for cleanup. Some new laws, however, are very effective. For example, section 523 (a) (7) of the Harbors and Navigation Code allows a peace officer to remove a vessel, with an expired registration date in excess of one year, from a waterway.

- 9 *Should the state become more involved in the cleanup efforts of abandoned vessels?*

Response:

Yes. AB 1950 (Lieu) would preemptively help reduce the number of abandoned vessels by establishing a grant program for local agencies to accept older "surrendered" vessels from owners prior to abandonment. The bill would also increase the minimum fine for vessel abandonment from \$500 to \$1000. I favor legislation of this type. Voluntary surrender of older vessels to willing public agencies via AB 1950 will enable vessel abatement to be conducted more efficiently and effectively, reducing both recovery and cleanup costs; thereby, reducing environmental and navigational hazards in the process.

Public Trust Responsibilities

The state and its departments, boards, and commissions have a responsibility to protect public trust resources, such as water quality, and fish and wildlife resources.

- 10 *How do you see your role on the commission in protecting the state's public trust resources? What types of mitigation does the commission require for the acceptance of boating and waterway grants?*

Response:

As a member of the commission, I feel a keen sense of responsibility to protect the state's public trust resources—both water and land. Most facilities serving boaters are on land. Facilities construction and demolition demand use of best practices to protect the environment, including waste recycling, mentioned in response to question 1.

Applicants for boating facility grants and loan are required to comply with environmental laws during construction, including the provisions of the California Environmental Quality Act. Where necessary mitigations are identified, they are employed. Some of these mitigations include use of various and innovative methods to reduce turbidity resulting from new

construction and renovation and scheduling work during the off-season to reduce impacts on fish and game migration as well as the recreational boater. Other water quality initiatives include the departments active role in preventing, controlling and eradicating the quagga and zebra mussel infestation of California waters and the clean marina partnership with the Coastal Commission and other water quality agencies.

Listed below are Department's programs that provide outreach or financial assistance to local agencies for water quality issues:

- Abandoned Watercraft Abatement Grants
- Boating Clean and Green Campaign
- "Boating Trails" Access Construction for Non-powered Vessels (Paddlecraft)
- Vessel Sewage Pumpout Facility Grants
- Multi-Media Outreach, Vessel Sewage
- Floating Restroom Grants
- Coastal Public Beach Restoration Grants

The aforementioned grants or programs are not required to be approved by the Commission; however, the Commission has advisory capacity over these programs. Many applicants will apply for these department programs independent of the loans and grants that the Commission is required to approve. For example, a city may apply for a small craft harbor construction loan that the Commission will consider for approval; the same applicant may apply for a vessel sewage pump out facility for the same harbor area in a separate application.

I trust that my reply has been responsive and helpful. If you have need of further information, please let me know.

Sincerely,

Douglas W. Metz

CALIFORNIA LEGISLATURE

MEMBERS

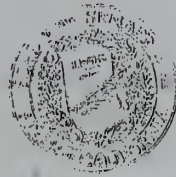
ROY ASHBURN

VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA

GREGORY SCHMIDT
SECRETARY OF THE SENATENETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

May 5, 2008

Cleotha Adams

Dear Mr. Adams:

As you know, your reappointment to the Corrections Standards Authority is subject to confirmation by the Senate. The Senate Rules Committee will conduct a confirmation hearing on your appointment on Wednesday, June 11, 2008.

We have prepared the following questions to which we would appreciate your written responses. When we receive your responses, we will determine whether you need to appear in person before the Rules Committee or whether your confirmation will be taken up without requiring your appearance.

Please provide your responses by May 27, 2008. We would also like to receive an updated Form 700, Statement of Economic Interest, by May 27th.

We acknowledge that this letter is longer than usual, but the issues facing the Corrections Standards Authority are difficult ones, and the Rules Committee has been very concerned about the Corrections Standards Authority's performance.

Mission

On July 1, 2005, as part of the Governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, the board is also responsible

for setting standards for the awarding of hundreds of millions of dollars for new jails, reentry facilities, and juvenile detention centers.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?*
2. *What training did you receive to help you understand the various responsibilities of the authority?*
3. *The CSA board meets every other month, but has a growing number of missions. How do you stay informed of CSA's activities, and how do you prepare for meetings?*
4. *What, in your view, should be CSA's top priorities? If CSA lacks resources, how will you prioritize projects and activities?*
5. *When you meet at a correctional facility, do you have an opportunity to tour the institution? Please provide examples. What lessons do you take away from these site visits that you can apply to your decision making?*

The Board of Corrections relied and now the CSA continues to rely on executive steering committees to create application guidelines for the awarding of funds. The executive steering committees were, formerly, very broadly inclusive and made up of a variety of stakeholder and correctional experts. Current executive steering committees have been criticized for being too narrowly drawn.

6. *What role do you play in the selection of executive steering committees? Is your input sought or are you informed of the committee's composition after the fact?*

Assembly Bill 900

Under AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Among other things, CSA is to give funding preference for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, CSA is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities, and for counties that provide mental health and substance abuse care to parolees. In March CSA received 24 proposals valued at almost \$1.2 billion for these projects. The board is scheduled to make final decisions at the May CSA meeting.

7. *In a draft proposal submitted to the board last November, a CSA executive committee established a ranking system that gave little weight to counties who were willing to establish re-entry facilities. This system was eventually revised to better reflect the law's intent. Please discuss the lessons learned from this process and how it has impacted other funding processes. Are executive steering committees that craft the details of CSA proposals open to the public? If they are closed to the public, please describe your reasoning.*
8. *In these and other construction projects, do you factor in counties that are proposing to incorporate innovative energy-efficient projects or use of green building products in their plans? If so, how?*

Peace Officer Selection and Training Standards

The reorganization of 2005 established a January 1, 2007, deadline for CSA to set minimum standards for state correctional facilities. However, several board members previously have indicated that the board does not have the resources to meet this goal.

9. *Please describe the current status of this effort, and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission.*
10. *How is the board addressing other responsibilities, such as spelling out the duties of correctional officers and other correctional jobs or validating the test given to correctional officer applicants? What is the status of these efforts and the timetable for completion?*

Local and State Facility Responsibility

Historically, board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

11. *How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?*
12. *Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?*
13. *Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?*

Juvenile Detention Facilities

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." On March 12, 2008, a San Francisco judge ordered CSA to comply with the existing law that attorneys for juvenile offenders said had not been enforced.

14. *What actions or policy reviews by CSA will the decision trigger?*
15. *In written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that the authority has several concerns about implementing SB 81 (Senate Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, the juvenile justice realignment legislation. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in overseeing the implementation and oversight of CSA's responsibilities under this law?*

Education Requirements

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

16. *What oversight do you provide to ensure the inspections are complete and accurate? How does CSA staff inform you of these inspections?*
17. *What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?*
18. *With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?*

Grant Administration

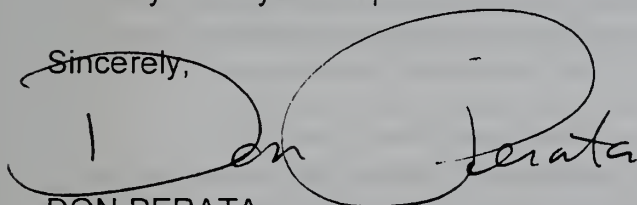
Each year the authority develops proposals for a variety of law enforcement grants, especially for facility construction.

19. *What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?*
20. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", is written over a large, oval-shaped scribble.

DON PERATA

DP:MG

cc: Correction Standards Authority

Senate Rules Committee-Answers to Questions dated May 5, 2008
Cleotha Adams

1. My goal is assist the body of the CSA as much as I can in the endeavor of improving the quality of corrections for youth and adults. I would like to see during my term on the CSA Board less overcrowding at the state and local level, and less youthful contact with authorities through innovative programs. I believe positive efforts have been set in place and additional work has to be done.
2. During my first appointment the Acting Executive Director (Jerry Read) briefed me on the duties and responsibilities of the Board. He offered the help of his staff anytime I needed assistance.
3. I believe the meeting time table currently is sufficient as it allows for the review and audit of certain projects prior to the next meeting. I receive constant updates via mail either electronically or traditionally or through special sessions of the CSA...
4. I believe our top priorities should be our youth offender programs, reentry programs and our reduction of mentally ill offender contact with law enforcement. If resources are lacking we need to look at the most at risk population and target those projects.
5. When meeting at correctional facilities we have always been given the opportunity by the host agency to tour their facility. Being at the facilities and not just reading about the results of a particular project is an excellent tool. While at the Fresno facility we witnessed the results of a culinary program for youthful offenders that were beyond expectations for a juvenile facility.
6. Usually the process consists of members that have been recommended to the CSA Board by the CSA staff. We vote to approve or not to approve this composition. Discussion if necessary is conducted prior to approval or disapproval of a committee.
7. The executive steering committee did meet in public session when they developed the elements of the RFP. During this process an adjustment was made to better coincide with the primary intent of AB 900. It is not immediately evident that this has impacted other funding processes.
8. Yes. during the executive committee meetings for revision of title 15 and 24 extensive discussion and ideas were reviewed on future green projects.
9. During the reorganization sufficient funding was not provided nor was enough personnel allocated to perform the tasks at hand. The assistance of the California

Senate Rules Committee

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Appointments

State University, Sacramento was established through a contract in 2005. Additional funding was granted to the CSA in 2007 to assist with this project. The portion of the project that related to the classifications of Correctional Officer, Youth Correctional Counselors and Youth Correctional Officers was completed in December of 2007. Additional funding is being requested to meet the next level of deadlines for development on selection and training standards for those classifications mentioned.

10. In January 2008 the process to develop minimum standards for the selection and training of these classifications. Updates are given routinely from the CSA staff on the standards for the selection and training of state correctional peace officers. The CSA determined that an interim exam should be developed until a complete job analysis could be completed. This exam was completed and implemented by the CDCR in January 2007.
11. The CSA staff conducts inspections of both adult and juvenile facilities very two years. The staff is available to all counties for assistance with technical questions or review of on issues such as construction or compliance issues. At present the number of visits to facilities is sufficient because of the access the counties has to the CSA staff.
12. At present we have meeting at certain facilities around the state on a rotating basis. Those facilities visited have given insight on different correctional atmospheres around the state. Other issues affecting facilities are passed through CSA staff to the board members via the Executive Director's office.
13. Yes, I believe that sufficient power exists but a review of additional tools to enhance efficiency should be made periodically.
14. The settlement agreement requires the CSA adhere to the requirements of section 209 (WIC). All corrective actions by counties are to be submitted to the CSA within the 60 days of being notified of non-compliance. If not corrected in 90 days the county is required to appear before the CSA Board. The settlement agreement requires the CSA to have counties appear before the CSA Board if they do not solve the non-compliance issues in the time specified. The CSA cannot close a juvenile facility but can determine if it is operating in an unsuitable manner.
15. The CSA totally supports this project and the results it will have on the community. While the CSA is supportive of this project limited resources were provided to the CSA to carry out its function. The CSA Staff has kept the CSA Board updated at the regularly scheduled meetings and discussed any necessary guidance needed as it relates to certain tasks.
16. The CSA staff conducts inspections of these facilities every two years. Any discrepancies in this area will be reported to the CSA Board. These concerns will

be addresses at the regularly scheduled meetings of CSA. The county affected will have to correct the discrepancy in the timeline addressed in 209 (WIC).

17. The CSA staff is responsible for inspecting facilities for compliance with the requirements of Title 15 (section 1370. Staff does not determine the quality of the programs, but only review the compliance with the regulation. If there is non-compliance it will be spelled out in the inspection report. The facility once notified of the non-compliance issue has to comply with corrective actions as prescribed by section 209 (WIC). If they fail to do so the county will be required to appear before the CSA Board for a determination of suitability
18. In order to meet the requirements of the legislation the CSA Board authorized an application review process in November 2007. The Juvenile Justice Delinquency Act as well Title 15 and 24 requirements were used in considering a facility's capacity of compliance with the intent of SB 81. The facility must apply for approval prior to housing subjects over the age of eighteen who may come in contact with younger juveniles.
19. The CSA is not directly involved in the disbursement of funds for JJCPA; the CSA coordinates the administration of this program with the State Controller's Office, who administers the funds. The CSA provides oversight in accordance with federal and state requirements. The CSA has numerous outlines to monitor compliance including regular updates at CSA meetings, approval of timelines and submission of financial invoices when applicable.
20. When ever a situation arises that affects a member of the CSA Board, that member will abstain from voting or participating in any actions that affect his/her organization.

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May 23, 2008

Senate Rules Committee

Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814.

MAY 27 2008

Appointments

RE: Response for Senate Rules Committee-Adele Arnold
Chief Probation Officer-Siskiyou County



- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?**

My goal is to provide my time, energy and professional expertise to carry out the many charges assigned to the Corrections Standards Authority. As a board member representing the Chief Probation Officers of California, specifically small counties, I am committed to providing leadership in the field of local and state detention and corrections as the Board strives to carry out the many mandates and responsibilities as assigned. My goal is to be well prepared and informed in all matters coming before the Board. I will make every effort to attend as many meetings as possible. If appointed to the board I promise the State of California the Governor and the Legislature that I will fully and without reservation carry out my duties as a Corrections Standard Authority Board Member.

If at the end of my term I have assisted the board in providing oversight that funded many meaningful projects and insured local and state correctional facilities and programs are designed, constructed and operated in ways that promote the highest degree of public safety I will consider my service to the board a success.

- 2. What training did you receive to help you understand the various responsibilities of the CSA?**

Prior to attending my first Corrections Standards Authority board meeting I was invited to Sacramento to attend an orientation from the CSA Executive Director and the Deputy Directors responsible for each of the CSA divisions. I was the only new member so I had the benefit of individual instruction and the ability to ask numerous questions. I was also provided with a CSA policy and information briefing binder which contains guidelines and information about the many tasks and responsibilities of CSA. The session lasted approximately four hours. Additionally, CSA staff has been very responsive to all inquiries and calls requesting additional information.

- 3. The CSA Board meets every other month. Is this often enough for the board to carry out its increasing number of missions? How do you stay informed of the CSA's activities?**

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I do not feel that I have sufficient information or time on the board to render a sound response to this question. I will say that the release of AB 900 jail construction dollars and the upcoming release of SB 81 juvenile construction dollars have resulted in very robust agendas for the board's consideration and action. The meetings move quickly and it is imperative that Board members are well prepared in order for the meeting to move forward. If additional mandates continue to be assigned to the Board monthly meetings may be necessary. CSA staff does a commendable job of keeping the Board members informed via email, conference calls and written documents.

4. *What, in your view, should the CSA's top priorities? If CSA lacks resources, how will you prioritize projects and activities?*

Implementation and oversight of SB 81, the Juvenile Justice Realignment Act and the oversight of AB900 should take top priority for CSA at this time. Statute mandates that CSA is to provide leadership and coordination in the field of local and state detention and corrections for the State of California. Construction dollars awarded by CSA for adult and juvenile facility projects is critical in this time of prison reform and juvenile realignment. Grant oversight requires assistance at every step of the process to ensure that local and state correctional facilities and programs are designed, constructed, and operated so they safeguard public safety and meet the needs for rehabilitation within a safe and secure environment.

I believe that projects and activities that support the main mission of CSA must be given sufficient staff support and that requires additional funding. If CSA lacks resources then timelines may need to be lengthened in order to accomplish the oversight and ensure that standards for new jails, reentry facilities and juvenile detention centers are met.

5. *When you meet at a correctional facility, do you have an opportunity to tour the institution? What lessons do you take away from these site visits that you can apply to your decision making?*

Currently the CSA Board meets six times a year. Half of the meetings are in Sacramento and the other half are held in facilities that were recently funded or administered by CSA. This provides an opportunity for those local corrections administrators and county officials who find it difficult to travel to Sacramento to attend board meetings. It also provides CSA Board members with an opportunity to personally observe the progress of key programs, projects and facilities for which the board is responsible.

I have enjoyed the opportunity to tour different facilities. The tours have been very informative and I have come away with knowledge and innovative ideas that can enhance institutional programs. It is of further assistance to me as Chief because I am always searching for ways to improve conditions of confinement in my county detention center as well as understand problems that are unique to different types of programming space. Additionally, it is rewarding to experience first hand the great accomplishments guided by the professional work of the CSA.

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The Board of Corrections relied, and the CSA currently continues to rely on executive steering committees to create application guidelines for the awarding of funds. The Executive Steering Committees (ESC) were, formerly, very broadly inclusive and made up of a variety of stakeholder and correctional experts. Current executive steering committees have been criticized for being too narrowly drawn.

6. What role do you play in the selection of executive steering committees? Is your input sought or are you informed of the committee's composition after the fact?

CSA staff recommends the selection of the chair and co-chair(s) to the CSA Board members. The Board has the ability to select any Board member to chair or co-chair any Executive Steering Committee (ESC). It appears that the organizations most directly affected by the implementation of new programs or changes to state regulations are selected to participate as members of the ESC. Most commonly the ESC's are comprised of representatives from large, medium, small and rural counties; northern, central and southern counties; Chiefs of Police; adult and/or juvenile advocates; medical and mental health providers; and, other subject matter experts. As a small county chief I was asked to sit on the ESC relating to the Title 15 regulation revisions several years ago. I am currently co-chair of the ESC to develop the RFP for SB 81 juvenile detention center construction and was involved in discussions regarding the full composition of the ESC. I have previously contacted CSA staff and recommended individuals from the public safety community to serve on a specific ESC. CSA staff request input from the board regarding the composition of the ESC and are responsive to suggestions and inquiries before the ESC is presented for approval. The Board must approve the composition of the ESCs, and the public also has the opportunity to comment on the make up of the ESC.

AB 900

Under AB 900 (Solario and Aghazarian), Chapter 7, Statutes of 2007, the CSA is to approve plans for \$750 million in new county jail facilities. Among other things, the CSA is to give funding preference for new jail construction to counties that assist the state in placing re-entry facilities for inmates approaching parole. In addition, the CSA is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities, and counties who provide mental health and substance abuse care to parolees. In March 2008, the CSA received 24 proposals valued at almost \$1.2 billion for these projects. The Board was scheduled to make final decisions at the May 12, 2008 CSA meeting.

7. In a draft proposal submitted to the Board last November, a CSA executive steering committee established a ranking system that gave little weight to counties who were willing to establish re-entry facilities. This system was eventually revised to better reflect the law's intent. Please discuss the lessons learned from this process and how it has impacted other funding processes. Are executive steering committees that craft the details of CSA

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proposals open to the public? If they are closed to the public, please describe your reasoning.

At the May 10, 2007 CSA Board meeting, the Board appointed San Bernardino County Sheriff, Gary Penrod and Yolo County Sheriff, Ed Prieto to serve as the chair and co-chair for the Jail Construction ESC. At the July 12, 2007 CSA Board meeting, the Board approved the list of names submitted to serve as ESC members. On September 24, 2007, the ESC met in public session to: 1) develop the elements of the RFP for AB 900 jail construction funds; 2) to develop specific factors (criteria) to be used to rate proposals; and, 3) to develop how the proposals would be rank ordered, so that counties could receive intent to award notices. The ESC developed the preliminary RFP, which was posted on the CSA website on November 1, 2007. The purpose was to allow counties and interested parties the opportunity to comment on the RFP at the November 14, 2007 "feedback session," and to allow the ESC to make amendments to the RFP, based upon public comment, before it was presented to the CSA Board at the December 13, 2007 meeting.

The preliminary RFP included a total of 1050 points for nine factors, which included: 1) project need; 2) detention alternatives; 3) scope of work and project impact; 4) administrative work plan; 5) net gain in beds; 6) cost effectiveness; 7) cash match; 8) preference points for assisting the state in siting a re-entry facility; and, 9) preference points for assisting the state with siting mental health day treatment, crisis care facilities, and the continuum of care for parolees after discharge from parole.

The initial number of points designated for: preference points for assisting the state in siting a re-entry facility, the siting of mental health day treatment, crisis care facilities, and the continuum of care for parolees after discharge from parole was 75 and 50 points respectively. At the November 14, 2007 Board "feedback session" it became evident to the Jail Construction ESC chair and co-chair that the points for assisting the state with the siting of a re-entry facility needed to be increased based upon public comment. Immediately after the "feedback session," the chair and co-chair met and agreed to increase the points for this preference from 75 to 150 points. Correspondence was then forwarded to all ESC members recommending that the preference points for counties assisting the state with siting a re-entry facility should be increased from 75 to 150 points based upon public comment. The ESC members concurred with the chair's recommendation and the RFP was amended.

The amended preliminary RFP was presented to the CSA Board for action at the December 13, 2007 Board meeting. The CSA Board met in special session, to approve the final RFP for jail construction funds. During this meeting, the Board discussed the legislative intent of AB 900 that jail construction funding should be linked to the siting of re-entry facilities. The Board then took further action to amend the RFP to increase the number of preference points for assisting the state with the siting of a re-entry facility from 150 points to 300 points. They also increased the preference points for assisting the state with the siting of mental

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health and substance services for parolees and ex-offenders from 50 points to 100 points.

Although the legislation did not specify that it was mandatory that counties were required to site a re-entry facility, the Legislature reinforced their intent that they wanted the jail construction funding to be awarded to counties who sited a re-entry facility. The CSA Board acknowledged the legislative Intent at the May 8, 2008 Board meeting, by passing a motion that the \$750 million In Phase I jail construction funding would only be conditionally awarded to counties that sited a re-entry facility and transferred title of the site, during the secondary due diligence process with CDCR.

ESC meetings are open to the public. The Board is proceeding with caution regarding SB 81 and has asked for assistance from legal regarding a few questions that were raised at one of the ESC meetings.

8. *In these and other construction projects, do you factor in counties that are proposing to incorporate innovative energy-efficient projects or use of green building products in their plans? If so, how*

Yes. As a Board member I am excited and supportive of proposals that incorporate "green" building in the design, construction, and operation of facilities that support conservation of natural resources. It is important for the State to encourage construction that is designed to be environmental friendly. Although compliance is voluntary, it will be one factor considered in the evaluations of proposals when assessing proposed scope of work and project impact.

Peace Officer Selection and Training Standards

The reorganization of 2005 established a January 1, 2007, deadline for CSA to set minimum standards for state correctional facilities. However, several Board members have indicated that the Board does not have the resources to meet this goal.

9. *Please describe the current status of this effort and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission?*

With the expansion of the duties and responsibilities for CSA Staff since the reorganization in 2005 they have continued to provide service to its established constituents and stakeholders. While the legislation amended the statute and gave CSA new authority, it did not provide sufficient funds for staff to accomplish these additional duties. Lack of funding has hampered CSA staffs ability to be fully successful in the execution of their duties because of these constraints.

As it relates to selection and training standards, it is my understanding that CSA partnered with CSU Sacramento in 2005 to assist in the development and selection of training standards. To meet this new mandate additional funding was requested by CSA administration in previous years. Unfortunately these requests were not

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funded because of competing budget priorities. In early 2007 CSA was given approval of funding to complete the job analysis research which is the foundational step to the development of standards. The job analysis report for the primary classifications of Correctional Officer, Youth Correctional Officer and the Youth Correctional Counselor for CDCR is complete.

At this time CSA's Administration is meeting with CDCR to address the resources needed to meet project demands and determine if additional funding is available to prevent delays in the project completion which is scheduled In December of 2009.

10. How is the Board addressing other responsibilities, such as spelling out the duties of Correctional Officers and other correctional jobs or validating the test given to correctional officer applicants? What is the status of these efforts and the timetable for completion?

The CSA Board receives routine informational updates from CSA staff on the standard setting responsibilities for the selection and training of state correctional peace officers, also known as the Job Components Analysis Project (JCAP). This project recently completed the job analyses for three major classifications.

Based on this new research, in January 2008, the CSA staff began the initial steps toward the development of minimum standards for the selection and training of these classifications. The target date for the development of standards for the three major classifications is December 2009. The ability to complete this project is dependent upon sufficient resources being allocated.

Back In 2006 CSA staff was requested to redirect its focus to examine the CO/YCO/YCC written exams and determine the feasibility of combining them into one exam for the purpose of increasing the efficiency of the selection process. A detailed review was conducted and it was determined that an interim exam needed to be developed until such time, as a full job analyses could be completed and selection tools be established.

The CSA staff has provided updates to the CSA Board on the development of this exam, which was completed in December 2006 and implemented by CDCR in January 2007. JCAP staff, in conjunction with CSUS has continued to develop, review, revise, and analyze additional exam questions for an item bank. These questions will be used for future versions of the test for the purpose of maintaining exam security and validity. The next version of the exam was completed and made available to the CDCR for implementation in January 2008. This exam allows the CDCR to continue to test applicants for the three different job classifications fairly, without the risk of legal liability or challenge, until such time as the JCAP can set new selection standards.

Local and State Facility Responsibility

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Historically, the CSA Board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that the CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

11. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits are sufficient?

Currently CSA staff conduct biennial inspections, in accordance with Penal Code § 6031.1 and Welfare and Institutions Code § 209 and 885. In addition, the CSA staff also provides ongoing technical assistance to facilities, based upon their needs such as onsite construction project review, or compliance issues.

CSA has worked hard to form collaborative working relationships with all stakeholders involved with the adult and juvenile detention systems throughout the state. These relationships are essential in the biennial inspection cycle. CSA has a history of moving counties into compliance, utilizing a two year cycle that includes: pre-inspection briefings, technical assistance, inspection, and regulation revision. CSA staff is always willing to lend assistance and support at the local level whenever asked. The CSA staff does not conduct surprise visits as they are counter productive and do not foster trusting collaborative relationships between local agencies and the CSA.

Based on current fiscal restraints and the relationship between CSA staff and stakeholders additional inspections do not seem warranted. However, if counties experience difficulty or need help in conforming to the requirements of the biennial inspection CSA staff should offer additional on site assistance.

12. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?

I have and will continue to visit facilities within the state. Between 2002 and 2006 I visited several juvenile facilities because Siskiyou County was awarded funding from CSA to construct a new 40 bed juvenile detention center. It was extremely beneficial to visit facilities to observe programming and facility design. I believe many dollars were saved in Siskiyou because of good advice and hard lessons learned by many of my colleagues.

The saying "a picture is worth a thousand words" rings true in this arena. It is important to see the operation in order to assess strengths and weaknesses. Operations that are functional, efficient, and ensure safety are constantly changing. Conditions of confinement must always be reviewed and evaluated based on best practices. Administrators like to show off good projects and program successes and are always ready to help another administrator who is experiencing a problem.

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13. Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?

In my opinion CSA has sufficient power and enforcement tools available to ensure that needed changes are made following an inspection. Should a facility not meet the requirements of the biennial inspection they stand to be brought before the board for a determination of suitability.

Juvenile Detention Facilities

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "the CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." On March 12, 2008, a San Francisco judge ordered CSA to comply with the existing law that attorneys for juvenile offenders said had not been enforced.

14. What actions or policy reviews by the CSA will the decision trigger?

The settlement agreement reached on March 12, 2008 requires the CSA to adhere to the requirements specified with Section 209, Welfare and Institutions Code (WIC). Section 209 requires counties submit to the CSA a corrective action plan that address each issue of non-compliance identified in the CSA biennial inspection within 60 days of notification. If the identified issues are not brought into compliance within 90 days after the submission of the corrective action plan, the county is required to come before the CSA Board at its next scheduled meeting for a determination of suitability for the continued housing of minors.

This code section has been in place since 1998. Prior to this lawsuit, CSA staff requested counties submit a corrective action plan to address the identified areas of non-compliance as defined in Section 209, WIC. CSA staff would then work with facility administrators and managers and provide technical assistance whenever requested to assist the counties with compliance issues. Some counties were either unable or unwilling to initiate the necessary changes. As a result, there have been occasions where unresolved compliance issues were identified in the following CSA inspections.

The settlement agreement mandates that CSA staff bring counties before the Board if they do not resolve non-compliance issues within the timelines contained in Section 209. CSA staff will continue to work with counties and provide the same level of technical assistance to those counties requesting it; however, as stated previously, staff workload and budget constraints may impact their abilities to do so.

The Facilities Operation Division of the CSA is comprised of 10 funded Field Representative positions. They are responsible for inspecting approximately 754 local adult and juvenile facilities for compliance with Title 15, California Code of Regulations.

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In anticipation of the outcome of the Waters Case, CSA began adhering to the requirements of Section 209, WIC In July 2007. In addition, many juvenile hall inspections were delayed to the end of the inspection cycle awaiting the outcome of the case. CSA is mandated to inspect local detention facilities on a biennial cycle. The cycle begins and ends with the fiscal calendar and the CSA is nearing the end of the 06/08 cycle. To date, the CSA has only had two counties come before the CSA Board for a determination of suitability as required in Section 209. Due to the bulk of the inspections of the juvenile halls occurring late in the inspection cycle, CSA staff advised the Board that a high number of juvenile halls will be before the Board beginning at the July CSA meeting.

Although the CSA Board has the authority to determine a juvenile hall as an unsuitable place for the confinement of minors, the CSA does not have the authority to close a facility. CSA findings of unsuitability would be posted on the CSA web page and made public. Although counties could choose to continue housing minors after a determination of unsuitability was made, it would be probable that youth advocacy groups such as the Youth Law Center or the Prison Law Office would initiate legal action in the form of conditions of confinement lawsuits.

In addition to authorizing the CSA with the authority to determine a juvenile hall as a suitable place for the confinement of minors, Section 209 identifies the Presiding Superior Court Judge with this authority as well. The judge can, at anytime, conduct an inspection of their juvenile detention facility and make determinations of suitability.

15. In written and verbal testimony before the Little Hoover Commission, the CSA's Executive Director stated that the authority has several concerns about implementing SB 81 (Senate Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, the juvenile justice realignment legislation. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in overseeing the implementation and oversight of the CSA's responsibilities under this law?

When the Juvenile Justice Realignment Act was signed by the Governor it included the need for considerable language clarification. The cleanup bill (AB191) was designated to provide clarification of responsibilities, timeframes, and resources however, it failed to do so and the responsibility fell to CSA Staff and the Board without any provisions for additional funding or human resources. Regardless of the fiscal and staff deficits CSA staff crafted proposed methods by which the mandates contained in SB81 and AB 191 could be met and presented them to the CSA Board at the November 8, 2007 meeting. The board reviewed and agreed with these methods. Board staff provided direction to the field regarding application process for the housing of 18 to 21 year old offenders within juvenile detention facilities, disbursement of the Youthful Offender Block Grant and for the development of the Juvenile Justice Development Plans.

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Currently each of the requirements of these bills is being met but because of limited resources compliance will produce a product that is less than ideal. CSA staff has consistently provided updates to the Board during regularly scheduled CSA meetings. At the January 10, 2008 meeting, the Board directed staff to generate a 6-month status report on implementation of the YOBG and it is anticipated program findings will be shared at the July 10, 2008 CSA meeting.

CSA is in complete support of the realignment and its potential positive effects on public safety and cost effective programming for the long term. This legislation presents broad implications for both state and local corrections agencies. However, CSA staff and the Board have concerns about its role in implementing SB 81, most notably the lack of adequate resources necessary to implement many of the realignment reforms, both mandatory and permissive.

Given the broad implications of this legislation for both state and local corrections agencies and its effects upon the three divisions of CSA I share the administrators concerns regarding the lack of adequate resources provided to implement the realignment reforms. Board involvement in this process must begin with support for expanded CSA resources.

Education Requirements:

Among many other requirements, the CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

16. What oversight do you provide to ensure that inspections are complete and accurate? How does the CSA staff inform you of these inspections?

The CSA Board relies on the expertise and competency of their staff to conduct the biennial inspections as required by statute. If at any time CSA board members have questions or concerns regarding any portion of the inspection process, they are encouraged to contact their staff. The CSA staff is very responsive to board members concerns or issues.

All unresolved compliance issues identified in the biennial inspection, or that are a result of crowding, are brought to the attention of the CSA Board members during the regularly scheduled meetings. As described in the above question 14, Section 209, Welfare and Institutions Code contains the specific reporting timelines.

17. What role should the CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?

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In addition to other requirements, the CSA is responsible for inspecting local juvenile and adult detention facilities for compliance with state regulations. As part of the inspections, officials determine if the facility is in compliance with Section 1370, Title 15, California Code of Regulations (CCR). This section requires juvenile detention facilities provide an education program that complies with the State Education Code and County Board of Education policies. Section 1313, Title 15, CCR requires the Superintendent of Schools to annually access the educational program. CSA staff relies on this annual report when determining compliance with regulations. CSA staff does not access the quality of the education programs within juvenile detention facilities, but only accesses compliance with the applicable Title 15 regulations.

If areas of non-compliance are discovered during the inspection, they are detailed in the inspection report. The inspection report is then provided to the facility administrator, facility manager, presiding Juvenile Court Judge, the county Chief Administrative Officer, the chair of the Board of Supervisors, and the chair of the Juvenile Justice Commission. As required in Section 209, Welfare and Institutions Code, the county has 60 days to complete and submit to the CSA a corrective action response. The county has 90 days after the completion of the corrective action response to correct the compliance issue. If the county fails to correct the compliance issue within these time frames, the county will be required to come before the CSA Board, who will make a determination of suitability. If, after examining all relevant facts surrounding the compliance issue, the CSA Board determines the facility is not a suitable place for the confinement of minors, the finding will be posted on the CSA website.

18. With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has the CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?

SB 81 expands the burden of ensuring the safe operation of local juvenile detention facilities on the CSA and the State. In order to house wards as specified in SB 81, this statute requires counties to apply to the CSA for approval of a county institution established for the purpose of housing juveniles as a suitable place for the detention or commitment before the facility can house an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under the age of 21 because the detained person will come into contact with persons under 18 years of age that are detained at the county institution. This step must take place before the facility can house an individual under the jurisdiction of the juvenile court who is between 19 - 21 years of age. Furthermore, SB 81 requires the CSA to review, approve or deny the application of the county within 30 days of receiving notice of this proposed use. The CSA must take into account the available programming, capacity, and safety of the institution. This will drive the need for more visits to the facilities and quite possibly monthly Board meetings.

In an effort to meet the intent of the legislation and in-lieu of additional resources being provided to implement the aforementioned approval process, the CSA Board authorized an application review process at its November 8, 2007 meeting. This

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review process requires counties to submit detailed plans that address the programming, capacity and safety issues associated with the housing of older offenders, as specified in the new legislation. The CSA staff utilizes current Title 15 and 24, California Code of Regulation requirements and current Juvenile Justice Delinquency Prevention Act requirements when assessing a facility's programming and capacity. Assessing a facility's safety will require the CSA staff to rely on their experience obtained during previous onsite visits and the facility's regulation compliance history. After review of the application, the CSA staff will notify the county within 30 days of their approval or denial of the application. During the biennial CSA inspection, the assigned Field Representative will further assess the facility's ability to meet the intent of Section 208.5.

Grant Administration

Each year the authority develops proposals for a variety of law enforcement grants, especially for facility construction.

19. What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?

To ensure that grants and program funds are expended in accordance with program requirements, the CSA has provided oversight that is consistent with federal and state legislative requirements, Generally Accepted Accounting Principles, and prudent administrative practices, whenever possible. The CSA Board has charged staff with regular monitoring (both programmatic and fiscal) of programs in most instances. CSA oversight exists at several stages of program development and implementation, including but not limited to:

- Appointment of CSA members; State Advisory Committee on Juvenile Justice (SACJJDP) members; and Subject-Matter Experts to Executive Steering Committees (ESCs) charged with program development, proposal rating, and identification of performance outcome measures;
- Approval of initial program timelines and reporting schedules regarding individual progress reporting and submission of quarterly financial invoices when applicable;
- Utilization of state contracts, and/or Grant Agreements, approved locally by Governing Boards (e.g. Board of Supervisors, City Council or Board of Directors) and local planning entities (i.e. Juvenile Justice Coordinating Councils); and signed by local department heads ensuring that program activities, proposed budgets, and desirable programmatic and fiscal benchmarks, as well as outcomes are formalized;
- Presentation of updates regarding programmatic and fiscal status at regularly scheduled CSA meetings;
- Regular monitoring and technical assistance of funded projects by the CSA staff as required; and,
- Review and approval of annual statewide reports including summary of both fiscal and programmatic findings, as required.

CSA Board Member Responses
Page 13

As the CSA is not directly involved in the disbursement of funds to counties for the Juvenile Justice Crime Prevention Act (JJCPA), we are not considered the fiduciary agent for this program. The CSA coordinates administration of this program with the State Controller's Office (SCO), who administers the JJCPA funds and disburses them directly to each county and ultimately accounts for any unspent monies. As indicated in the enacting legislation, the CSA is responsible for review of each county's plan and development of the annual statewide report on legislatively required outcomes. Similarly, the CSA while providing oversight of the Youthful Offender Block Grant (YOBG) and JJDP as described in SB 81, is not directly involved in the actual distribution of these funds. It is noted that the Governor authorized the Department of Finance to coordinate with the SCO in disbursement of the YOBG funds (including the 5 percent of the YOBG that is disbursed to counties due to unforeseen circumstances) for FY 2007-08.

20. Given that some Board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?

It is imperative that any Board member with potential conflicts of interest recuse themselves during the review and approval of competitive grant processes. This recusal is most often applicable when a Board member or Committee member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds. This practice of recusal has not compromised the integrity of the rating process and is common practice for this Board.

Respectfully Submitted
Adele Arnold, Board Member
Corrections Standards Authority

CALIFORNIA LEGISLATURE

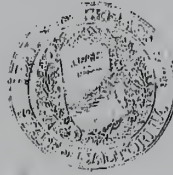
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ROY ASHBURN
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ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

May 5, 2008

William A. Powers

Dear Mr. Powers:

As you know, your reappointment to the Corrections Standards Authority is subject to confirmation by the Senate. The Senate Rules Committee will conduct a confirmation hearing on your appointment on Wednesday, June 11, 2008.

We have prepared the following questions to which we would appreciate your written responses. When we receive your responses, we will determine whether you need to appear in person before the Rules Committee or whether your confirmation will be taken up without requiring your appearance.

Please provide your responses by May 27, 2008. We would also like to receive an updated Form 700, Statement of Economic Interest, by May 27th.

We acknowledge that this letter is longer than usual, but the issues facing the Corrections Standards Authority are difficult ones, and the Rules Committee has been very concerned about the Corrections Standards Authority's performance.

Mission

On July 1, 2005, as part of the Governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, the board is also responsible

for setting standards for the awarding of hundreds of millions of dollars for new jails, reentry facilities, and juvenile detention centers.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?*
2. *What training did you receive to help you understand the various responsibilities of the authority?*
3. *The CSA board meets every other month, but has a growing number of missions. How do you stay informed of CSA's activities, and how do you prepare for meetings?*
4. *What, in your view, should be CSA's top priorities? If CSA lacks resources, how will you prioritize projects and activities?*
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The Board of Corrections relied and now the CSA continues to rely on executive steering committees to create application guidelines for the awarding of funds. The executive steering committees were, formerly, very broadly inclusive and made up of a variety of stakeholder and correctional experts. Current executive steering committees have been criticized for being too narrowly drawn.

6. *What role do you play in the selection of executive steering committees? Is your input sought or are you informed of the committee's composition after the fact?*

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9. *Please describe the current status of this effort, and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission.*
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Historically, board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

11. *How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?*
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13. *Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?*

Juvenile Detention Facilities

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." On March 12, 2008, a San Francisco judge ordered CSA to comply with the existing law that attorneys for juvenile offenders said had not been enforced.

14. *What actions or policy reviews by CSA will the decision trigger?*
15. *In written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that the authority has several concerns about implementing SB 81 (Senate Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, the juvenile justice realignment legislation. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in overseeing the implementation and oversight of CSA's responsibilities under this law?*

Education Requirements

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

16. *What oversight do you provide to ensure the inspections are complete and accurate? How does CSA staff inform you of these inspections?*
17. *What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?*
18. *With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?*

Grant Administration

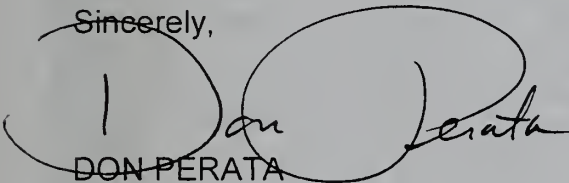
Each year the authority develops proposals for a variety of law enforcement grants, especially for facility construction.

19. *What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?*
20. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



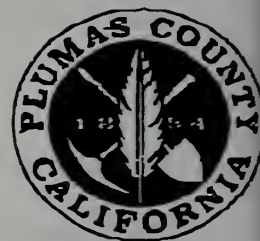
DON PERATA

DP:MG

cc: Correction Standards Authority

BOARD OF SUPERVISORS

Bill Powers
Plumas County Supervisor
District 1



May 24, 2008

Senator Don Perata
Senate Rules Committee
State Capitol
Room 420
Sacramento, California 95814

Senate Rules Committee

MAY 27 2008

Dear Senator:

Appointments

Thank you for this opportunity to respond and reflect in my role as a member of the Corrections Standards Authority. If I may, I'll answer the questionnaire in narrative form and parenthetically insert your question numbers where appropriate.

I represent California Counties on the Authority, and as such, my value to the Authority is to act as a conduit between Counties government and the State, doing what I can to accurately reflect the wants and concerns of the wide-ranging demographics from as disparate county populations as Los Angeles to Alpine. (1) My goals, therefore, are to clearly represent the varied progress counties are making toward meeting their individual and state-mandated needs for prison reform in all areas of new construction, program design, and after-care in its conceptual framework as it applies, again, to each unique community circumstance. What I hope we as a board accomplish is a refinement of the grant allocations for all areas of the re-design, and I'll recognize success in two areas: When we clearly see that the scrupulous pre-design interrogation of the applicants leaves plenty of room for adaptation, with virtually no hidden areas for fiscal abuse; and a statistical and wide-ranging decline in recidivism and incarceration.

When I was first tapped for the position, I had a rudimentary knowledge of how the state prison system and the county jail systems worked through my primary attendance at the California State Association of Counties (CSAC) Administration of Justice Policy Committee, but had no in-depth understanding. (2) From the time I was first introduced to the CSA staff, I was given through both verbal and written instruction a much more detailed education about the dilemmas caused by overcrowding, staff recruitment, facilities adequacy, recidivism, training deficiencies, lax or inadequate security systems, and frustrations faced at all levels. As a large ship is more difficult to set on a new course than a small boat; so too is the massive CDCR more difficult to steer than any given prison or jail, sheriff's office or probation department. The responsibilities of the Authority, in my view, help all county and state departments under the CDCR's pervue to accomplish their individual missions while staying compliant with not only State law, but federal and public scrutiny as well. I have been very impressed with the competence and professionalism of the CSA staff to this point, and am further impressed with

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the amount of work they accomplish considering the amount of work left to be done. Increases in support staff are necessary with the increases in workload as bond funding gets implemented.

(3) With the increases in implementation measures, I urge more participation and action through subcommittee sessions and recommendations to the full board. Through staff reports both in hardcopy and by email, Authority members are focused on each area of progress as we move forward through the processes. Last year, the criteria for facility funding was "shopped" around the state through a series of regional focus sessions that I felt were very instructive for me and for the public in general. With these background sets, I'm able to read my agenda packets with more clarity and feel more fully prepared for the sessions.

(4) In order to right a system that operates on a multitude of levels and functions, and because those levels and functions are interdependent, we have to let no one function be dominant over others. As we implement the facilities construction and prepare for new reentry facilities, we must focus on our interception and intervention services of probation and re-socialization. These services of course are much more ethereal than facilities, and the social debates will play an even bigger role in their implementation. Again, with limited staff resources, the CSA will need to rely on individual counties and facilities to interpret how these services are defined, which in turn will lead to unsolvable local bias. Stronger direction and modeling needs to be placed as a directive, being both fair and practical at the county and facility level. By that I mean mandated directives work only when the affected county or facility is staffed adequately.

At our March meeting, CSA convened at the San Mateo Juvenile Facility. (5) We were guided through the various sectors there, and board members were able to contrast and compare it with other counties' facilities; in my case, another urban facility in Alameda County that I had toured a few months previously as well as rural facilities in Lassen and Nevada Counties. With my background in alternative high school education (18 years teaching and administering continuation high school), I have a strong belief that rehabilitation occurs only through positive environmental and cultural enhancement; that if we want juvenile felons to become worse, we should continue to worsen their circumstances and environment through mental subjugation and physical isolation and sterilization. However, if we want a juvenile felon to reprogram his or her future into a positive, we have to provide and foster positive modeling through counseling and education and provide inclusive cultural reconstruction through ongoing engagement with them in socially significant activities, but within the parameters of their judicial sentencing. I see through these visits a move to a more positive approach and better understanding of the needs both of the detainee as well as those of the communities to which these people will return.

(6) At present, the Secretary and senior staff select most executive steering committees and the remainder of the CSA is informed after the fact. In fairness, I have felt that given the focus of those committees, the selections were both prudent and professional, and I would not have replaced any of the members. However, I believe that a more inclusive process of selection would be welcome, and a broader scope of representation would at least in some instances be beneficial. As new ESCs are formed in the areas of education, alcohol and drug intervention strategies, strategies for social success, vocational training, or juvenile probation services, I am hopeful that the Secretary and senior staff will recognize that new ideas and approaches to diminish recidivism will require a more wide-ranging set of members.

(7) At the Dec 13 Special Meeting of the CSA, the ESC's recommendations were amended and applications points were weighted to favor those proposals that promised reentry

facilities. I voted to approve the new weighting for the first round of \$750 Million. I am also an advocate of changing the criteria and requirements in the second round of funding to be more inclusive of facility needs beyond capacity, in such cases as outdated jails and inadequate staffing and service provisions.

(8) As facilities proposals are reviewed and granted, best building practices and efficiencies are certainly considered. Within these parameters, green building products, solar-powered energy sources, and modern insulating techniques will be incumbent in not only prison and jail facilities, but most new state construction projects, consistent with the Legislature and Governor's intent. Although these are only recommendations, we are seeing building contractors and governments responding positively to implementing all varieties of more efficient and energy-saving construction techniques.

(9) Need for critical up-staffing, as stated previously, will be agendized and acted on. I will suggest that a relatively small budget addition be made to administration to meet requirements of each new implementation, both in construction of new facilities and services provisions oversight. Recruitment for positions from within state employee pool will be encouraged. CSA staff has established a solid working relationship between other state agency staffs and with the state county organization CSAC, and with League of California Cities. These relationships can function to help each other without intruding in each other's mission. This cooperative will help provide reference and statistical uniformity. However, the enormous implementation of training standards and hiring practices at all levels continues to need more staffing. Early this year CSA heard the recommendation for consolidating and revising some of the classifications where practical and appropriate, showing excellent progress. We plan to have the revisions in place by December of this year if resource allocations allow.

(10) Recent agenda action items have addressed some needs of standardizing and consolidating test materials for correctional officer applicants.

I continue to believe in a collaborative approach working with counties. Any other enforcement practices result in inefficiency at least and blatant resistance and retaliation at worst. That doesn't mean, however, that CSA should act only as a cheerleader. As previously mentioned, guidelines and standards of practice, whether in construction or provision of services, should be as clear as possible and as such, easily enforceable. As with state-driven mandates to local governments, the vagaries are where most of the frustrations lay.

Staff moved the examination process to its latest level earlier this year. In conversation with another board member, I came to realize that recruitment and testing of applicants is the "short side" of the problem. With ongoing war, our prison and jail systems are absent the usually productive pool of applicants that are now serving in our Nation's military. When our effort in the Middle East is concluded, the availability of these quality applicants will most likely return.

(11) CSA staff is dedicated to consistent and scheduled facilities inspections, and in the 10 months I have been on the board, we have heard several reports from these inspections. Inspections are required every two years, however if situations demand, interim inspections have occurred. I have spent time with two of the inspectors whose responsibilities are to consistently inspect and report their findings. We have heard reports and they have led to substantive changes in facilities. I believe the inspections are effective in the enforcement process.

(12) In addition to my responsibilities as a CSA board member, I am also part of my county's Juvenile Justice and Delinquency Prevention Commission. Plumas County is rural and

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many of our wards are placed in facilities out of county. I have had the opportunity to visit out of county and inspected facilities in Nevada County and collaborated on reports from Lassen, Placer, and Trinity counties as well. Our next CSA meeting will be held at facilities in San Bernardino County where I look forward to a visit and tour. So far, our county team's visits have noted minor structural problems that were corrected.

(13) Realizing the variegated complexities of California's prison and jail system, and adding to it the necessary oversight of sheriff, probation, health, and mental health services, I believe the CSA is understaffed to meet the future needs of its mission. I will press for additional staff and technological equipment to streamline reporting and provide a more comprehensive communications system throughout the state. I am conversant with the dilemmas presented by tight budgets and the need to meet imposed mandates as well as real needs. I believe the solution for enforcement of identified deficiencies lies in a more open communication and cooperation between those entities charged with compliance at the local level and enforcement agencies at the state and federal levels. With more cooperation, deficiencies become a "shared" responsibility and enforcement becomes a tool rather than a weapon. My opinion is that rarely would closing a facility actually work to make conditions better for anyone. Instead, closure would only transfer and burden other facilities, or communities in the case of early release, and not work toward solving the original problem.

(14) The outcomes of *Waters v Tilton* were significant mainly in illustrating the gap between adequate review staff and the job they are expected to perform. The board as well as staff responded to the suit adequately. However, with limited staffing for inspections and review, and the commensurate sudden shift in holding policy from state to local facilities, I anticipate much more focus on Section 209 of the Welfare and Institutions Code by the press, advocate groups, and staff. With inspections presently on a biennial cycle, the relationship between counties and CSA staff will be best served if a new communications system for ongoing self-evaluation is created. We are in a time of transition and the need for increased staffing for inspections and processing is paramount. After sitting as review board for a county that did not meet the 60 day compliance mandate, I can see areas where more constructive pressure can create positive outcomes, and a more interactive atmosphere between county and state staff would be beneficial. But those relationships will require many more staff hours, given the large number of facilities throughout the state. With 10 funded Field Representative positions with myriad duties as well as the responsibility of inspecting approximately 754 local adult and juvenile facilities, the balance of workload has to be achieved through increased staffing; else the potential for juvenile detainees being caught in inadequate facilities rises.

(15) When the CSA was created as a reform tool out of the Department of Corrections, the intent was to meet the challenges of a rising population and facility and service needs being pushed far beyond practical limits. The "new" concept is ready to implemented, and I strongly support the effort. I believe we can accomplish the intent and purpose of SB 81, but we will fall short without increases in necessary resources. Present staff is at its limits, and county partnerships are strained from the local end as well, with new requirements added to existing ones. I was privileged to be part of a grant evaluation team last year and realized as I reviewed the applications the amount of local staff time necessary to gather the application background information for (in that particular request cycle) a rather small amount of funding. These are desperate economic times for many counties and ironically, the choices of many counties is to cut secondary staffing positions—the very positions that would normally be assigned to apply for

grant funding. I believe that a fully staffed assistance corps at the CSA staff level would be the synergism necessary to fully implement SB 81 statutes and mandates. The CSA board, if provided with a clear "punch-list" report for the various types and sizes of facilities will be able to quickly determine compliance issues and move processes forward. I expect also, that we can by fiat agree to meet as necessary more often to accomplish quick application of the legislation.

As a former veteran continuation school principal and teacher, I am a very strong advocate of educating young people to better their circumstances, no matter what those circumstances are at the moment. (16) I believe that beyond the biennial inspection process previously mentioned, academic and vocational education opportunities in juvenile detention facilities can be improved by streamlining communications between school districts and court-ordered placements so there are seamless transitions for juveniles in both directions. The "three day" rule for enrollment in education classes can be replaced with a new and more practical system of electronic transfer from sending school to receiving court placement. Communication is a key element between schools and court. The CSA board can be instrumental in reviewing these changes.

(17) The Press has been very aggressive in identifying the epidemic of overcrowding in our prison systems, and in illustrating the failures of state juvenile facilities to prevent suicides, provide meaningful education, and create positive transitional programs for inmates reentering society. CSA's next big challenge will be to ensure counties and state facilities move on to the most important step beyond public safety and create the types of program for a majority of inmates that truly work as tools for a better existence beyond the bars. For many, it will be breaking the alcohol and drug use patterns that haunt them. For many others, it will be teaching them to learn and develop the skills necessary to find and keep a job. For still others, it will be to identify the physical, cultural, societal, and/or community barriers that have separated them from a productive life in the first place. Incarceration is expensive. Education and rehabilitation are relatively inexpensive because they can lead to life-long self-maintenance. From full dependence to full independence is a worthy goal.

(18) As the concept of reentry facilities was "shopped" around the state in a series of local workshops, the concept of secure reentry facilities was formalized. One of the areas I see CSA being particularly helpful is to advise CDCR staff to create similar separation requirements for youthful offenders ages 18-21 at county level. CSA board has implemented a review process for new applications from counties and it is through this process that we can assist in regulating such separate facilities. Here again is an illustration of why we will need more staff and time as a convening board for oversight. These are all new, creative areas, and presuppose direct increases in staff time and workload.

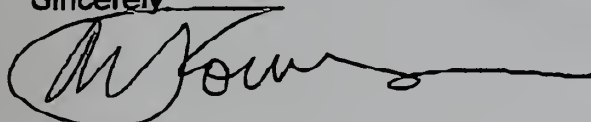
(19) Grant applications are scrutinized for compliance in all areas and those that do not identify preliminary process guarantees are discounted. Those grants that are funded, then, are validated to be within the understanding of compliance and can be evaluated within our scope. Ongoing review by CSA staff is in place to evaluate and recommend action at various stages of implementation. Close cooperation is necessary between local authorities and CSA to provide consistency. For my part, participation at both the CSA and local levels through my county Juvenile Justice and Delinquency Prevention Commission has given me a specific insight to the possibilities of better communication between agencies. Again, more staffing is paramount to success.

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(20) As a County Supervisor, I have had a variety of opportunities to recuse myself from a vote or decision that could be perceived, imagined, or has real influence of direct benefit to me, or benefit secularly a competing jurisdiction that I represent. I am compelled to hold the same standard in my positions on the Corrections Standards Authority Board. I am known to take the ethical high road in all such circumstances. Each board member is reminded to test his or her own involvement in such decision-making.

Again, thank you for giving me this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Powers", with a long horizontal flourish extending to the right.

Bill Powers

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CALIFORNIA LEGISLATURE

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SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR



SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

May 5, 2008

Mimi H. Silbert, Ph.D.

Dear Dr. Silbert:

As you know, your reappointment to the Corrections Standards Authority is subject to confirmation by the Senate. The Senate Rules Committee will conduct a confirmation hearing on your appointment on Wednesday, June 11, 2008.

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13. *Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?*

Juvenile Detention Facilities

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." On March 12, 2008, a San Francisco judge ordered CSA to comply with the existing law that attorneys for juvenile offenders said had not been enforced.

14. *What actions or policy reviews by CSA will the decision trigger?*
15. *In written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that the authority has several concerns about implementing SB 81 (Senate Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, the juvenile justice realignment legislation. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in overseeing the implementation and oversight of CSA's responsibilities under this law?*

Education Requirements

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

16. *What oversight do you provide to ensure the inspections are complete and accurate? How does CSA staff inform you of these inspections?*
17. *What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?*
18. *With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?*

Grant Administration

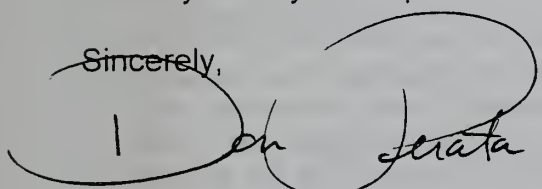
Each year the authority develops proposals for a variety of law enforcement grants, especially for facility construction.

19. *What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?*
20. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", is written over a large, loopy circular flourish.

DON PERATA

DP:MG

cc: Correction Standards Authority



DELANCEY STREET
FOUNDATION

Dr. Mimi Halper Silbert
President & CEO

June 18, 2008
Dictated but not read

Senator Don Perata, Chairman, Senate Rule Committee
c/o Nettie Sablehaus
Senate Rules Committee Appointments Director
State Capitol
Room 420
Sacramento, CA 95814

Senate Rules Committee

JUN 18 2008

Dear Nettie,

Appointments

Please forgive my very delayed response to the questions sent by Chairman Perata regarding the issues facing the Corrections Standards Authority. As you may know, I have had some health issues this year, and I have not been the best "attendee" at the meetings. I also must acknowledge that this has been a very difficult time of transition not only from the Board of Corrections to the Corrections Standards Authority, but from CDC to CDCR. There are some wonderful things happening with particular programs being designed. I know how often planning meetings have been held and how dedicated everyone involved is. I wish, however, particularly given the Governors commitment to change, that there could be a solid staff as the Secretary of Corrections, the assistant, and the various positions put in place by the reorganization.

It has been my experience that the appointees to the CSA, while perhaps new to the Board, are incredibly dedicated and committed to trying to enact the intentions of the Governor's reorganization plan as well as the legislatures bills most, most particularly AB900.

The staff of CSA has done an extraordinary job in redeveloping the solid relationships with the counties that had existed for many years. I believe that once those relationships are solid and reaffirmed, and the staff has time to put together so many of the things that had lapsed during the transition, that they do have the ability and the authority to hold the counties accountable to meeting the standards. My concern about the counties under CSA is far less than my concern with the relationship and authority we have with CDCR. There is no question, if CSA is to truly revamp the culture, training, programming, and other necessary changes to be made within the Department of Corrections and Rehabilitation, than the staff requires greater resources and a more solid relationship with the Governors and the CDCR staff.

There is no question that, with the reorganization of YACA, the expansion of the responsibilities of the Board into the inclusion of minimum standards, the new hopes and the new laws for CDCR, an enormous amount of work must be done. For reentry to become more successful and the linking of how we handle juvenile detention centers with the research that the Board of Corrections has provided the legislature over recent years about alternative to incarceration and the successes that programs have had deterring juveniles from crime, the Board and the head of paroles and the Secretary of Corrections need to speak with one voice. A great deal of prior research has been conducted by the Board of Corrections on county facilities and particular programs enacted through the Board of Corrections passed into law by the legislature their incredibly positive results which would help not only the institutions, the individuals, but provide a reduction in cost to CDCR and of course produce more public safety for our society. It seems that sometimes the circle of CSA, CDCR, the Governors office, the counties, is one that could provide so many benefits if communication is kept up, but confusion and problems without the communication keeping the circle going.

Regarding my own background, I have a Doctorate degree in Criminology, I've been a member of numerous expert panels, Blue Ribbon Commissions, police and probation training throughout the country as well as California, and have worked directly with several Secretaries of Corrections including Jim Gomez and those appointed by Governor Schwarzenegger. Also, I have run an alternative to incarceration/reentry organization for 37 years. That and my many years on the Board of Corrections and quite frankly, the fact that I feel that our field is basically the purpose of my life, has given me background and understanding of some of the very complex issues that CSA is facing today.

My greatest failing regarding CSA is the difficulty I have, both because of my schedule and because of my recent health problems as to be able to attend every meeting. However even without attending the meetings, I stay abreast of all the CSA's activities in between meetings from the people directly involved with CSA as well as from people I know well in the field. I think my greatest asset is my age. ☺ Working in this field for a very long time, I feel fortunate enough to have strong and open relationships with many of the people involved in the growing number of missions at CSA. I talk to them often and feel that knowledge not only keeps me prepared and abreast of CSA's activities, but also ways in which we might all work together in a more beneficial manner.

What could look initially like two different priorities - - one focusing on the state prison system, the other on local county probation detention issues - - in fact the priorities need to work hand in hand if we are to decrease recidivism and seriously put a dent crime, while teaching people to become decent legitimate drug free crime free contributing members of society. People come to the state system from the counties. People will be returning to counties from the state system. The separation between what goes on at the county level and at the state level is not a helpful separation; we really need to understand the length and responsibilities that are shared.

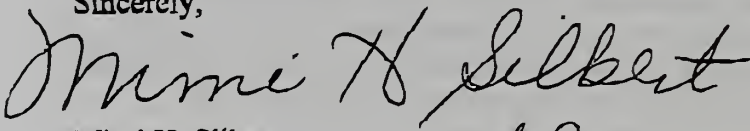
It is also critical to me that at some point we understand the seriousness of the gang problem. We now have laws which require people released from state prison to return to their county

of origin or of commitment. Given the nature of obligations put on these people by gang leaders, it is often the worst situation we could set up to return people to counties where gang leaders are expecting them to perform gang activities in exchange for possible protection provided within the state system. While these laws made sense at one time (family ties etc) they often underlie the problems people who are gang affiliated have with reentering society and succeeding, no matter how many wonderful programs we provide for them within the prison system. This is one of a number of basic issues I think desperately need to be addressed in order to make the entire system, juvenile, adult, state, county work to produce the results we all want which is a safer society and a more productive citizenry.

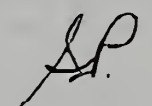
I still believe all of the statements I wrote in my May 31st, 2006 letter to the Senate Rules Committee. I have many frustrations with the reorganization and some of the moments we have missed in our original window of opportunity. However, if you still want me as a member, I am willing to continue. I certainly am aware of my own short comings in this area, but if you chose to appoint me, I will do my best to continue to find a way that we can move on all of these issues and get past the sometimes too cumbersome planning and research and development stages. Again, I apologize for the delay in my response. I am traveling. This letter has been dictated but not read. Please also give any grammatical errors.

Thanks for your consideration.

Sincerely,



Mimi H. Silbert
President



MHS:sp

Senate Rules Committee

MAY 21 2008

Appointments

May 19, 2008

Nettie Sabelhaus
 Senate Rules Committee Appointments Director
 Room 420, State Capitol
 Sacramento, CA 95814

Re: Re-appointment of Erin Garner to the State Mining and Geology Board

Dear Ms. Sabelhaus:

This letter contains information requested by Senate Rules Committee Chairman Don Perata regarding my potential re-appointment to the State Mining and Geology Board (SMGB). I have presented his questions below, in bold italics, followed by my responses.

1. ***Since 2005 when you were first appointed, what have been your most significant accomplishments as a member of the State Mining and Geology Board?***

I have proudly played a prominent role in the development and implementation of an entirely new and updated strategic plan which helps guide the SMGB's actions and results. The strategic plan includes elements such as monitoring and measurement of local agency performance of State Mining and Reclamation Act (SMARA) requirements, training and outreach measures, interagency coordination, and development of guidance and regulation for new responsibilities such as determination of vested rights for mining sites. I also helped guide the development of a Statewide SMARA compliance database to monitor agency SMARA performance and seek areas requiring additional training or enforcement.

2. ***Please provide a brief statement of your goals for the future. What do you hope to accomplish during your next term on the State Mining and Geology Board? How will you measure your success?***

My goals for future SMGB activities include development of a standardized California SMARA Manual, which can serve as a standard guidance document for SMARA implementation, oversight, monitoring, and enforcement procedures across the many SMARA lead agencies in California. One element of this manual may be the introduction of a statewide standardized electronic reporting and database system to be updated by local agencies. During this term, I also expect the SMGB to work its way through the remaining agency reviews across the State and ensure SMARA compliance.

Measurement of success on these items is relatively straightforward. The SMARA Manual will need to be complete and rolled out with an appropriate training module. The electronic reporting and database system will need to be developed and populated with data, and we should be able to provide final performance data and reports regarding the SMARA compliance of any lead agency in California.

3. ***How do you propose prioritizing the board's numerous responsibilities along with implementation of an ambitious strategic plan?***

The priorities of the SMGB should match those prescribed by the people of California through the Governor's Office and the Legislature. For example, legislated increases in the development of infrastructure across the state require identification and protection of additional mineral resources. Principles of prioritization would also always include careful stewardship and protection of the people and resources of the State.

May 19, 2008

4. *What do you believe should be done to increase the performance of local authorities to administer the Surface Mining and Reclamation Act?*

I believe that a standardized guidance manual as mentioned above would help significantly. However, constant monitoring is appropriate, and the development of electronic reporting and database maintenance will assist in this regard. Unfortunately, direct enforcement measures and consideration of direct oversight is sometimes necessary and appropriate.

5. *Should the board review how the state administers the Surface Mining and Reclamation Act? Is there any benefit to having the State assume the administration of mining regulations as is done in other states?*

The administration of SMARA is and should be a constant subject of SMGB review. There are clear benefits of State administration of SMARA, in terms of standardization of enforcement and the apolitical protection of local resources. However, the desire for local control and representation can make such changes unpopular and difficult to achieve. The changes described above in the form of standardized guidance and monitoring might be a good first step along this path.

6. *What can the board do to ensure that the required inspections of mining operations occur?*

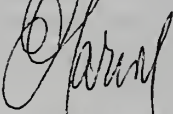
I recommend the regular monitoring of lead agency performance through a regular reporting and database system. The system data would be evaluated and recommendations would be requested of staff on a monthly basis. As non-performing agencies are identified, they should receive intensified outreach, training, guidance, and enforcement or replacement as necessary.

7. *How should the board deal with the reclamation of open-pit mines?*

Responsible parties should be identified and new reclamation status reports and schedules should be required. An interagency working team should be identified in select cases, such as those that are leaching cyanide to groundwater. Reclamation enforcement should commence immediately wherever necessary. In cases of "orphan" sites, a mitigation fund may need to be developed using a mining fee system in order to protect the people and resources of the State.

Thank you for your consideration of my re-appointment to the SMGB, and please do not hesitate to call me at (408) 569 7647 if you have any further questions.

Sincerely,



Erin Garner, PG, HG
State Mining and Geology Board Member

Robert E. Tepel, P.G.

May 19, 2008

The Hon. Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento CA 95814-4900

Senate Rules Committee

MAY 21 2008

Appointments

Confirmation Hearing, Reappointment to State Mining and Geology Board, June 25, 2008

Dear Senator Perata:

I am pleased to present my responses to the questions posed in your letter of April 30, 2008, regarding my reappointment hearing. The State Mining and Geology Board operates at the intersection of applied science and public policy. I have answered your questions with that concept foremost.

- 1. Since 2001 when you were first appointed, what have been your most significant accomplishments as a member of the State Mining and Geology Board?*

I have always been concerned with operational efficiency of the board through process improvement, encouraging public and stakeholder participation in the board's decision-making, improving local agency and mine operator compliance with the Surface Mining and Reclamation Act (SMARA), improving the quality of the mine reclamation plans submitted to the state, and improving local agency compliance with the Alquist-Priolo Earthquake Fault Zoning Act. My most significant accomplishments have been:

- Participating in the Technical Advisory Committee to draft guidelines for the investigation of naturally occurring asbestos. This potentially hazardous substance is found throughout much of the Mother Lode and Coast Range areas of California, and is becoming a concern as land development expands in those areas.
- Process improvement: implementing a clear written requirement that reports and documents prepared by licensed professionals and submitted to the board will be appropriately signed and stamped, and presented as final documents, before the board makes decisions based on them.
- Called for the development of internal guidelines for board staff inspection of mines required after the board assumes SMARA inspection authority for a local agency. These guidelines, as public documents, serve as examples of a thorough,

yet measured, approach to mine inspections under SMARA that are educational examples for local agencies.

- Improving local agency compliance with SMARA inspection requirements. Office of Mine Reclamation training courses for local agencies were revived with my support. Survey of local agency compliance by Executive Officer, developed in consultation with me, led to additional work by OMR.
 - Encouraged staff research into the way that other states administer mine reclamation acts. The resultant report is a fundamental reference for evaluation of the way that the Surface Mining and Reclamation Act is administered in California
2. *Please provide a brief statement of your goals for the future. What do you hope to accomplish during your next term on the State Mining and Geology Board? How will you measure your success?*

Goals for the future include:

- Improving local agency administration of the Surface Mining and Reclamation Act
- Improving local agency administration of the Alquist-Priolo Earthquake Fault Zoning Act
- Increasing the board's understanding of the budget process and improving coordination of the board's budget with the Department of Conservation.
- Relating strategic plan goals to budget.

Success in the first two items can be measured by comparing accomplishment with established baselines. Success in the third item can be measured by changes in the way the board's budget is presented in detail within the Department of Conservation budget. Success in the last item can be measured by the inclusion of conceptual budget needs to meet goals in the next edition of the board's strategic plan.

3. *How do you propose prioritizing the board's numerous responsibilities along with implementation of an ambitious strategic plan?*

There is always more work to be done than can be accomplished timely and well. The State Mining and Geology Board can continue to improve its performance by greater utilization of board committees, and of Technical Advisory Committees chaired by board members and populated by knowledgeable academics and consulting industry leaders. The immediate challenges are improving local agency administration of the Surface Mining and Reclamation Act and the Alquist-Priolo Earthquake Fault Zoning Act. Progress in these areas will bring progress in fulfilling Goals I, II, and III of the board's strategic plan; these are core goals.

4. *What do you believe should be done to increase the performance of local authorities to administer the Surface Mining and Reclamation Act?*

Local authorities face many challenges in administering the Surface Mining and Reclamation Act. The board's research to date has shown that most of them lack knowledgeable staff, and probably even lack the staff knowledge to know how to evaluate consultants to do the inspections for them on a contract basis. The board's outreach to local agencies, including training offered by the Office of Mine Reclamation, must be continued and expanded. As the board meets in various locations around the state, we should continue the practice of inviting nearby local agencies to make presentations on their administration of SMARA, and to engage in dialog with the board and its staff on issues of concern to them.

5. *Should the board review how the state administers the Surface mining and Reclamation Act? Is there any benefit to having the state assume the administration of mining regulations as is done in other states?*

The board should continue its ongoing review of how the state administers the Surface Mining and Reclamation Act. There likely is a benefit to having the state assume the administration of SMARA regulations, as is done in other states. That benefit, which will require legislative support, is improved quality, uniformity, and coverage of mine inspections statewide. Some local agencies, however, are committed to full and fair administration of SMARA regulations, and it may be advisable to find a way for them to continue to conduct SMARA inspections and Financial Assurance reviews under board authorization if the default choice is direct state administration of SMARA.

6. *What can the board do to ensure that the required inspections of mining operations occur?*

The board can continue and expand its outreach to local agencies to inform them of their responsibilities under SMARA, to encourage them to take advantage of training offered by the Office of Mine Reclamation, and to encourage them to take advantage of the expertise available from board staff. Beyond that, the board has found that notifying local agencies that the board might consider assuming their responsibilities under SMARA is often quite effective in bringing the need for assertive SMARA implementation to their attention.

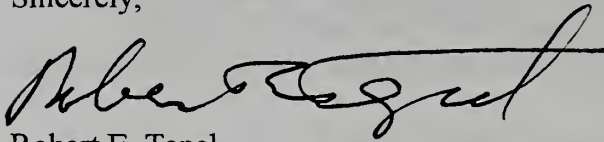
7. *How should the board deal with the reclamation of open-pit mines?*

The reclamation of open-pit mines is a serious concern for many stakeholders. The board addressed a major part of this concern with the adoption of regulations that require the backfilling of new open-pit metallic mines. Going forward, the board should monitor and review the reclamation of open-pit non-metallic mines, which is generally economically

driven if the mines, as is common, are located close to urbanized areas where land values make such reclamation attractive.

I would be pleased to work with you or your staff on State Mining and Geology Board issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Tepel", with a long horizontal flourish extending to the right.

Robert E. Tepel



RADM. Frank X. Johnston, USMS

12 May 2008

Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420
State Capital
Sacramento, California 95814

Dear Ms. Sabelhaus:

This letter is in response to Senator Don Perata's letter to me of 30 April 2008 regarding my appointment to the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. In his letter, Senator Perata asked my response to eight specific questions. Listed below are my comments on each question.

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Pilot Commissioners?
How will you measure your success?

My specific goal is to insure that each and every pilot has the most modern and efficient tools in the maritime trade to assist them in the safe navigation of vessels in and out of San Francisco Bay. The future economy of our ports depend entirely on the efficient means of moving very large vessels in and out of our ports. Many factors must be considered when piloting a vessel; whether it be the environment, weather, capability of the vessel. All factors must be considered by the pilot. To insure that piloting incidents are properly investigated and that the Commission develop a clearer use of terminology to differentiate incidents that do not involve any pilot error, or minor pilot error from those in which the level or type of pilot error warrants more detailed review and monitoring. Lastly, that the Board's role

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be better communicated to the public and the legislature to permit a better understanding of the Board's function and activities.

How will you measure your success?

The accomplishments of the pilots in performing their assigned tasks day after day, without fanfare, is proof of their professionalism and dedication to servicing the maritime industry. If I can assist and guide the Pilot Association in the training and competence of the sixty pilots, I feel I will have performed my duties as a Pilot Commissioner. An improved understanding of the significance of past incidents as a measure of pilot performance, consistent review of pilot incident history, and an evidence of greater understanding both by the public and the legislature in what the Board does.

2. What is your view on the structure of the commission in overseeing the pilots? Do you believe it has been effective? Are there ways in which it could be improved? Has the board reviewed how pilots are regulated in other states?

I believe, in my short time as a Commissioner, that the Board structure is sufficient to carry out its mandate. Having said that, I also have observed that the staff is understaffed and has been that way for years. To ask two individuals—an Executive Director and a Secretary---to oversee sixty pilots places a burden that sometimes is overwhelming. An example being the recent COSCO BUSAN incident which has been time consuming for both the staff and the Commissioners. As a newly appointed Commissioner, I am still on a learning curve and observer on how we can assist and direct the pilots and improve their efficiency. There are constant improvements in navigation technology that we, as the Board, are constantly looking at to assist the pilots. We have looked at other Pilot Commissions and Associations. It appears that each has a unique perspective in their dealings with each other bearing in mind the geographic location of each pilot station. Having a Commission Board comprised of 2 pilots, 2 industry representatives, and 3 public members provides a healthy balance of perspectives and valuable expertise from both the pilot and industry sides, while ensuring protection of the public interest.

3. Specifically, what staff assistance do you receive in carrying out your duties?

There are two full-time employees: an Executive Director and a Secretary. The Board also contracts with a legal counsel who has an extensive background in maritime law. The Commission also have part-time investigators to assist in investigating piloting incidents and qualified medical examiners that conduct physical examinations of pilots to insure that they meet the standard U.S. Coast Guard standards. The Board also uses the SHIPS guidelines used by employers who hire merchant mariners to determine fitness for duty for all pilots.

4. Has the commission reviewed the appropriateness of the shifts the Pilots work or other worker safety issues? If so, what conclusions Have been reached?

A report at the monthly commission open meeting by the Pilot Agent addressed the issue of hours worked by each pilot and whether a pilot has worked over a 12 hour minimum rest period. Through this procedure, the Commission seeks to ensure that the pilots get sufficient rest periods to insure the safe passage of ships in and out of the Bay.

As the Incident Review Committee chairman, I review each incident in which a pilot is involved. A detailed analysis is made of each incident, with reports from the individual pilot, the commission investigator and an in-depth overall analysis by the Executive Director (including an analysis of whether fatigue may have been a factor). Based upon all the facts, I either concur or non-concur on the Director's recommendation. This recommendation is then presented to the whole Commission members for acceptance.

5. How can the embarking and disembarking procedure be made safer? Is it feasible to use helicopters to ferry pilots to ships, as is done in other ports?

There are just so many variables in embarking and disembarking pilots that to say one method is better than another is not feasible. This is a determination that must be made by the individual pilot. In some cases, depending upon the vessel, weather conditions, seas, etc., it might be safer to let the pilot stay aboard the ship till the next port. The use of a helicopter depends greatly on the material condition of the vessel. Does it have a helo deck? Is the ships gear situation where a helo could get close enough to pick up the pilot? There are just too many factors to make and ultimately, it should

be the pilot that makes that decision. Again, weather conditions would be a prime condition. In the San Francisco Bay area, fog would be a prime consideration.

6. Is there a specific number of incidents, or a type of incident, that would cause the incident review committee to take a closer look at a pilot?

Not to my knowledge. Guidelines for determining corrective action following a piloting incident require the Incident Review Committee-of which I am the chairman-to consider eleven specific factors, among them, the severity of any misconduct or degree of negligence involved in the matter; the danger posed to the public; the number and frequency of prior incidents involving pilot error; the nature and extent of any injuries, property damage or harm to the environment resulting from the incident; the length of time the pilot has been licensed; and prior corrective action imposed on the pilot.

7. What level of infraction is needed for a pilot's license to be Suspended or revoked?

The Commission has adopted by regulation guidelines for a level of correction action that may be considered appropriate in response to specific types of misconduct. These guidelines can be found in Title 7, California Code of Regulations, Section 210(f). Examples of the types of misconduct that may call for a period of suspension include the negligent performance of duties related to vessel navigation, failure to comply with federal, state or local navigation laws, failure to file a timely written report following a marine incident. The guidelines are modeled after the Coast Guard's guidelines and expressly recognize that circumstances, including the number of prior incidents involving pilot error, which may warrant going outside the guidelines.

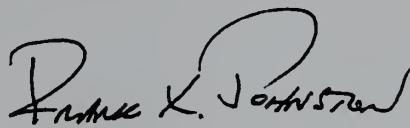
These guidelines are intended to guide the Incident Review Committee in determining the appropriate action to be taken.

8. Has the Board reviewed the medical procedures used for issuing or reissuing a pilot's license? If not, should it?

The Board is currently seeking funding authority to retain the services of a qualified medical examiner in reviewing its standards and procedures for

determining a pilot's fitness, including the assessment of any degradation in situational awareness and the means of determining any change in the pilot's fitness between examinations.

Please feel free to contact me if I can answer any further questions.



Frank X. Johnston

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